TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 894. 57.

THE HOME FOR INCURABLES, APPELLANT,

vs.

MARY SPENCER NOBLE ET AL.

FILED FEBRUARY 10, 1897.

No. 900. 61.

EMELINE COLVILLE, APPELLANT,

vs.

THE AMERICAN SECURITY AND TRUST COMPANY.

FILED FEBRUARY 19, 1897.

APPEALS FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

(16,490 & 16,496.)

(16,490 & 16,496.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 304.

THE HOME FOR INCURABLES, APPELLANT,

vs.

MARY SPENCER NOBLE ET AL.

FILED FEBRUARY 10, 1897.

No. 309.

EMELINE COLVILLE, APPELLANT,

vs.

THE AMERICAN SECURITY AND TRUST COMPANY.

FILED FEBRUARY 19, 1897.

APPEALS FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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1 In the Court of Appeals of the District of Columbia.

EMELINE COLVILLE, Appellant,
vs.
AMERICAN SECURITY AND TRUST COMPANY, Trustee, } No. 614.

and

MARY SPENCER NOBLE *et al.*, Appellants,
vs.
THE AMERICAN SECURITY AND TRUST COMPANY, a Corporation, *et al.* } No. 615.

In the Supreme Court of the District of Columbia.

THE AMERICAN SECURITY AND TRUST COMPANY, a Corporation, Trustee under the Last Will and Testament of Mary E. Ruth, Deceased, Complainant,
vs.
MARY SPENCER NOBLE, PATTIE BELLE Tilghman, Jonathan Perry Harrison, Jr., a Minor; Samuel Alexander Harrison and Lucy Bird Harrison, Minors; Bradford O. Harrison, Lydia Caroline Harrison, a Minor; Eleanor Susanna Willis, Robert Leigh Spencer, Webster Lindsley Spencer, Katharine C. Spencer, Emily H. Hayden, The Hospital of the University of Pennsylvania, The Home for Incurables, and Emeline Colville, Defendants. } In Equity. No. 16834, Docket No. 39.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Filed October 2, 1895.

In the Supreme Court of the District of Columbia.

THE AMERICAN SECURITY AND TRUST COMPANY, a Corporation, Trustee under the Last Will and Testament of Mary E. Ruth, Deceased, Complainant,

vs.

MARY SPENCER NOBLE, PATTIE BELLE Tilghman, Jonathan Perry Harrison, Jr., a Minor; Samuel Alexander Harrison and Lucy Bird Harrison, Minors; Bradford O. Harrison, Lydia Caroline Harrison, a Minor; Eleanor Susanna Willis, Robert Leigh Spencer, Webster Lindsley Spencer, Katherine C. Spencer, Emily H. Hayden, The Hospital of the University of Pennsylvania, The Home for Incurables, and Emeline Colville, Defendants.

In Equity. No. 16834, Doc. No. 39.

ORIGINAL BILL.

The complainant respectfully shows unto the court:

1.

That it is a corporation duly organized, existing, and doing business in the District of Columbia by virtue of the authority of an act of Congress approved October 1, 1890, and authorized to act as administrator, executor, and trustee, and brings this suit as trustee under the last will and testament of Mary E. Ruth, deceased.

2.

That heretofore, to wit, on or about the 16th day of June, 1892, Mary E. Ruth, a resident of the District of Columbia, departed this life testate; that in and by her last will and testament she constituted and appointed your complainant the executor thereof and gave, devised, and bequeathed all of her estate, real, personal, or mixed, in and upon the trusts in said will set forth and declared, that is to say, in trust to invest and reinvest and pay the net income arising therefrom to the guardians of her grand-daughter, Sophia Yuengling Huston, during the period of her minority for her support and maintenance, or so much thereof as should be necessary for such purpose, and thereafter, upon her attaining the age of twenty-one years, to pay over to her the entire income during her life, subject, however, to certain conditions and restrictions. Said will further provides that in the event of the death of said grand-

3 daughter, or in case she should forfeit her right to receive said income by reason of a violation of the condition therein, that the trusts therein created should cease and be determined, and thereupon directed your complainant to convey and deliver so much of said estate as amounts to five thousand dollars to the Hospital of the University of Pennsylvania, to endow and maintain a perpetual bed in memory of her son, Melancthon L. Ruth. Said will further gave, devised, and bequeathed all the rest and residue of said estate to the "Home for Incurables" at Fordham, New York city, in the State of New York, to be used by said "home" to endow and forever maintain one or more beds in said "home" in memory of her said son. Said will is dated the first day of June, A. D. 1892, and was duly executed. Thereafter and on the same day said executrix made and executed a codicil to her said last will and testament, wherein and whereby she revoked and annulled the before-mentioned bequest to the "Home for Incurables" at Fordham, New York city, in the State of New York, and in lieu thereof made a bequest in the language following, to wit:

"I hereby give and bequeath the five thousand dollars (heretofore in my will bequeathed to said Home for Incurables) to my friend Emeline Colville, the widow of Samuel Colville now living in New York city, said bequest being on account of her kindness to my son and myself during his and my illness and my distress." Both said will and codicil were duly proved and admitted to probate and record on the 24th day of June, A. D. 1892. A certified copy of said will and codicil and of the letters testamentary granted thereon are herewith filed and marked Exhibit "A" with bill and prayed to be read and taken as part of this bill.

3.

Letters testamentary were granted unto your complainant on the 28th day of June, A. D. 1892, and thereupon your complainant entered upon the performance of the trusts in it reposed and by said will and under said letters testamentary.

4.

That said Mary E. Ruth died seized and possessed of a considerable property, both real and personal, the real estate consisting of a farm about one hundred and sixty acres of land and situate in the county of Talbot, in the State of Maryland, near the town of St. Michaels, and real estate in Washington, D. C.; that the personal estate consisted principally of money in bank, bonds and real-estate notes secured by deeds of trust, and household furniture, schedules of which, being copy of the inventory of the personal estate as appraised by the probate court, *is* herewith filed, marked Exhibits "B" and "C" with bill, and *is* prayed to be read and taken as a part of this bill of complaint.

Your complainant further shows that on or about the eight- day of October, 1892, it, as trustee under the will of said testatrix, sold and disposed of said real estate and received therefor the net sum of $4,895.24, and thereafter invested the proceeds in the same man-

4 ner as it has invested other money belonging to the estate, to wit, in interest-bearing securities and notes secured on real estate by first deeds of trust.

5.

That on the seventh day of September, 1894, your complainant exhibited a first and final account of its administration of the estate of said testatrix, and said account was duly approved and passed upon; thereupon your complainant took said estate as trustees, according to the terms and provision- of said last will and testament, and proceeded to discharge its duty as such trustee; that as such trustee there was delivered to it, under the order and direction of this court, holding a special term for orphans' court business, money and securities of great value, to wit, of the value of about $16,769.24, a schedule of the same being filed herewith, marked Exhibit "D" with bill, prayed to be read and taken as a part of this bill.

That as trustee complainant now holds in its hands, in money and securities, a total sum of about thirty thousand dollars, being the proceeds of sale of the before-named farm, the sum turned over to it by the orphans' court, and the proceeds for the sale of other real estate and the accumulation of unexpended income.

6.

That said testatrix left surviving her, as her next of kin and heirs-at-law, as your complainant is informed and believes and hence avers, the following-named persons:

Mary Spencer Noble, wife of Horace Noble, of Baltimore, Md.; Pattie Belle Tilghan, wife of Oswald Tilghan, of Easton, Talbot county, Md., daughter of Dr. Samuel A. Harrison, deceased, a brother of the testatrix, and the following-named children and grandchild of Jonathan Perry Harrison, deceased, a brother of the whole blood, three of whom are minors:

Jonathan Perry Harrison, Jr. (minor), Houston, Texas; Samuel Alexander Harrison (minor), Lucy Bird Harrison (minor), and Bradford O. Harrison, St. Louis, Mo.; Lydia Caroline Harrison, a grand-daughter of said Jonathan Perry Harrison and daughter of Addison Blaney Harrison, who was a son of the before-named Jonathan Perry Harrison, said Lydia now residing at No. 33 Taylor street, West New Brighton, Staten Island, New York; Eleanor Susanna Willis, wife of William Willis, St. Michaels, Maryland, only child of Emily Harrison, a sister of the whole blood of testatrix; Robert Leigh Spencer, Webster Lindsley Spencer, Katherine C. Spencer, Emily H. Hayden, wife of Charles S. Hayden, of the city of Baltimore, State of Maryland, children of Ann C. B. Spencer, a sister of the half blood.

7.

That the Hospital of the University of Pennsylvania is named as a legatee in said will; that the Home for Incurables, at Fordham,

New York city, is a legatee named in the will, and Emeline Colville is a legatee named in the codicil to said will.

8.

That Sophia Yuengling Huston, the grand-daughter of said testatrix and the beneficiary under said last will and testament during her lifetime, departed this life on or about the 4th day of April, 1895, not yet having attained the age of twenty-one years, whereby and by reason whereof, according to the provisions of said will, the trusts under it reposed in your complainant should cease and be determined, and the estate remaining in its hands should be distributed according to the directions of said will.

9.

That because of ambiguity and inconsistency apparent upon the face of said will and codicil your complainant is in doubt as to whom it should distribute the fund and estate in its hands, and it is advised by counsel and believes, and hence avers, that it cannot safely proceed further in the administration of the trusts upon it conferred by and under said will and codicil except under the order and direction of this honorable court.

To the end, therefore, that this court may take jurisdiction in the premises, and may advise and direct your complainant in the further administration of said trust, complainant prays:

1.

That the writ of subpœna may issue out of this court, directed to the defendants and each of them, requiring them and each of them to appear and answer the exigency of this bill of complaint.

2.

That this cause may be referred to the auditor of this court to state an account for distribution according to a proper construction of said will and codicil.

3.

That an account may be taken and testimony adduced before such auditor as may seem necessary and proper in the premises.

4.

That your complainant may be allowed out of the fund in its hands its necessary expenses incurred in and about the premises, including counsel fees, together with a reasonable commission for the performance of its trust.

5.

That your complainant may have such other and further relief

6 in the premises as to the court may seem necessary and proper and as the nature of its case may require.

AMERICAN SECURITY AND TRUST COMPANY,
[SEAL.] By WM. A. McKENNEY, *Trust Officer.*

WM. A. McKENNEY,
Sol'r for Complainants.

The defendants to this bill are Mary Spencer Noble, Pattie Tilghman, Jonathan Perry Harrison, Jr., a minor; Samuel Alexander Harrison and Lucy Bird Harrison, minors; Bradford O. Harrison, Lydia Caroline Harrison, a minor; Eleanor Susanna Willis, Robert Leigh Spencer, Webster Lindsley Spencer, Katherine C. Spencer, Emily H. Hayden, The Hospital of the University of Pennsylvania, The Home for Incurables, and Emeline Colville.

I, William A. McKenney, being first duly sworn, depose and say that I am the trust officer of The American Security and Trust Company, complainant named in the foregoing bill, by me as such officer subscribed; that I have read the same and know the contents thereof; that the matters and things therein stated upon personal knowledge are true and those stated upon information and belief I believe to be true.

WM. A. McKENNEY.

Subscribed and sworn to before me this 2d day of Oct., A. D. 1895.

J. R. YOUNG, *Clerk, &c.*,
By R. J. MEIGS,
Assistant Clerk.

EXHIBIT "A" WITH BILL.

Filed October 2, 1895.

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

DISTRICT OF COLUMBIA, *To wit:*

The United States of America to all persons to whom these presents shall come, Greeting:

Know ye that the last will and testament of *Mary Eleanor Ruth*, late of the District of Columbia, deceased, hath in due form of law been exhibited, proved, and recorded in the office of the register of wills for the District of Columbia, a copy of which is to these presents annexed, and administration of all the goods, chattels, and credits of the deceased is hereby granted and committed unto American Security and Trust Company, the *executor* by the said will appointed.

7 Witness *Andrew C. Bradley*, justice holding the special term of the said supreme court for orphans' court business, [SEAL.] this *28th* day of *June*, in the year of our Lord one thousand eight hundred and *ninety-two*, and of the Independence of the United States the one hundred and *sixteenth*.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.

I, Percy B. Metzger, treasurer and trust officer of the American Security & Trust Co., do swear that it will well and truly administer the goods, chattels, personal estate, and credits of Mary Eleanor Ruth, late of the District of Columbia, deceased, to the best of its knowledge, according to law, and will give a just account of its administration when thereto it shall be lawfully called, so help me God.

PERCY B. METZGER,
Treasurer & Trust Officer of American Security and Trust Co.

Sworn and subscribed to before me this 28th day of June, A. D. 1892.

Test: L. P. WRIGHT,
Register of Wills.

Will.

I, Mary Eleanor Ruth, residing in the city of Washington and the District of Columbia, being of sound and disposing mind and memory, do make and publish and declare this to be my last will and testament, hereby revoking and making null and void any and all former wills and codicils by me at any time made.

First. I direct my executor hereinafter named to first pay out of my estate my funeral expenses and all just debts.

Second. I give devise and bequeath all of my estate, real personal or mixed, whether in possession, revision or remainder now required or hereafter to be acquired and wheresoever situate to the "American Security and Trust Company" of Washington city District of Columbia its successors and assigns, in trust nevertheless for the following uses and purposes only, that is to say—

To invest and to reinvest the proceeds of my said estate in its discretion from time to time in any of the following classes of securities; that is either in United States bonds or in municipal or State bonds or in the first-mortgage bonds of dividend-paying railroads or in loans secured by first trusts upon real estate in the District of Columbia, said loans not to exceed three-fourths market value of said real estate; and to pay over so much of the annual income from said investments and reinvestments to the guardian or guardians of my grand-daughter Sophia Yuengling Huston, as may be sufficient to provide for her maintenance, education and support until she becomes of the full age of twenty-one years, after which period the entire income so annually received

8 from said investments and reinvestments shall be paid over by said trustee to my said grand-daughter for her sole use and benefit for and during the period of her natural life. Provided however that the income thus provided for my said grand-daughter for and during the term of her natural life shall sooner cease and determine at any time when it is ascertained by my said trustee that any part of my said income shall have been given by said grand-daughter, or in anywise expended by or through her for the use or benefit of Robert J. Huston, from whom her mother, my daughter, obtained a divorce with custody of said Sophia Yuengling Huston given absolutely to her said mother. In case the income shall so cease and determine before the death of my said grand-daughter then said income, and all accumulations thereof and the entire principal of said trust estate shall be disposed of as provided in the next succeeding. Item of this my last will and testament.

I further authorize my aforesaid trustee to sell any portion of the estate herein conveyed to it in trust as aforesaid and to invest and reinvest the proceeds as hereinbefore provided giving to purchasers good and sufficient deeds or other evidences of title, without obligation upon the part of said purchasers to see to the application of the purchase-money.

Third. In the event of the death of my said grand-daughter Sophia Yuengling Huston or of the occurrence of the prior contingency for the determination of said trust hereinbefore provided in item two, then the trust hereinbefore created and vested in the "American Security and Trust Company" shall cease and be determined and so much of my said estate shall thereupon be conveyed and delivered over by said American Security and Trust Company to the Hospital of the University of Pennsylvania as amounts to five thousand dollars said five thousand dollars to be used by said hospital to endow and forever maintain a first-class perpetual bed in said hospital in the city of Philadelphia said bed to be in the name and memory of my beloved son Malancthon Love Ruth.

All the residue and remainder of my said estate of whatever kind after the payment of said five thousand dollars for the establishment of said perpetual bed in said hospital I give devise and bequeath to the "Home for Incurables" at Fordham, New York city, in the State of New York its successors and assigns forever to be used by said "Home for Incurables" to endow and forever maintain one or more beds in said home in the name and memory of my beloved son Malancthon Love Ruth.

Fourth. I nominate and appoint Mary Robinson Wright wife of J. Hood Wright of New York city and Mary Robinson Markle wife of John Markle of Hazelton Pennsylvania and the survivors of them to be the guardians or guardian of the property and the person of my said grand-daughter Sophia Yuengling Huston they and each of them being my valued friends and having consented to act in that behalf.

Fifth. I hereby nominate and appoint the "American Security

9 and Trust Company" of Washington city, District of Columbia to be the sole executor of my estate.

In witness whereof I have hereunto set my hand this first day of June in the year of our Lord eighteen hundred and ninety-two.

MARY E. RUTH.

Signed and published in our presence by the above-named Mary Eleanor Ruth as and for her last will and testament, who, at her request, in her presence, and in the presence of each other, have hereunto subscribed our names as witnesses thereto.

HENRY WISE GARNETT.
WALTER V. R. BERRY,
416 *5th St.*
HARVEY S. W. DE GAW,
416 *5th St. N. W.*

Form 2.

Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

DISTRICT OF COLUMBIA, *To wit:*

This day appeared Henry Wise Garnett, one of the subscribing witnesses to the foregoing last will and testament of Mary E. Ruth, late of the District of Columbia, deceased, and solemnly made oath on the Holy Evangels of Almighty God that he did see the testatrix therein named sign this will; that she published, pronounced, and declared the same to be her last will and testament; that at the time of so doing she was, to the best of his apprehension, of sound and disposing mind and capable of executing a valid deed or contract, and that his name as witness to the aforesaid will was signed in the presence and at the request of testatrix and in the presence of the other subscribing witnesses thereto.

Test: L. P. WRIGHT,
Register of Wills.

I, Mary Eleanor Ruth being of sound and disposing mind and memory and understanding do make and publish this codicil to my last will and testament—I hereby revoke and annul the bequest therein made by me to the Home for Incurables at Fordham New York city in the State of New York and I hereby give and bequeath the five thousand dollars (heretofore in my will bequeathed to said Home for Incurables) to my friend Emeline Colville, the widow of Samuel Colville, now living in New York city said bequest being on account of her kindness to my son and myself during his and my illness and my distress.

In witness whereof I have hereto affixed my name this first day of June in the year of our Lord eighteen hundred and ninety-two and I in all other things ratify and affirm my said will.

MARY E. RUTH.

10 Signed and published in our presence by the above-named Mary Eleanor Ruth as and for a codicil to her last will and testament, who, at her request, in her presence, and in the presence of each other, have hereunto subscribed our names as witnesses thereto.

HENRY WISE GARNETT.
WALTER V. R. BERRY, 416 *5th St.*
HARVEY S. W. DE GAW,
416 *5th St. N. W.*

Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

DISTRICT OF COLUMAIA, *To wit:*

JUNE 23RD, 1892.

This day appeared Henry Wise Garnett, one of the subscribing witnesses to the aforegoing codicil to the last will and testament of Mary E. Ruth, late of the District of Columbia, deceased, and solemnly made oath on the Holy Evangels of Almighty God that he did see the testatrix therein named sign this codicil; that she published, pronounced, and declared the same to be a codicil to her last will and testament; that at the time of so doing she was, to the best of his apprehension, of sound and disposing mind, memory, and understanding and capable of executing a valid deed or contract, and that his name as witness to the aforesaid codicil was signed in the presence and at the request of the testatrix and in the presence of the other subscribing witnesses thereto.

Test: L. P. WRIGHT,
Register of Wills.

Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

DISTRICT OF COLUMBIA, *To wit:*

JUNE 24TH, 1892.

This day appeared Walter V. R. Berry and Harvey S. W. De Gaw, two of the subscribing witnesses to the aforegoing codicil to the last will and testament of Mary E. Ruth, late of the District of Columbia, deceased, and severally made oath on the Holy Evangels of Almighty God that they did see the testatrix therein named sign this codicil; that she published, pronounced, and declared the same to be a codicil to her last will and testament; that at the time of so doing she was, to the best of their apprehension, of sound and disposing mind, memory, and understanding and capable of executing a valid deed or contract, and that their names as witnesses to the aforesaid codicil were signed in the presence and at the request of the testatrix and in the presence of the other subscribing witness thereto.

Test: L. P. WRIGHT,
Register of Wills.

11 In the Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

DISTRICT OF COLUMBIA, *To wit:*

I, *Levi P. Wright, register of wills* for the District of Columbia and *ex officio* clerk of the said special term for orphans' court business, do hereby certify that the aforegoing is a true copy of the original *will* and *codicil* of *Mary E. Ruth*, deceased, and the probates thereto filed and recorded in the office of the register of wills for the District of Columbia aforesaid, and also that the said *will* and *codicil*, after having been proven by the witnesses whose names appear in the foregoing probates, was by order of the supreme court of the District of Columbia, holding a special term for orphans' court business, duly admitted to probate and record on the *24th* day of *June*, A. D. *one thousand eight hundred* and ninety-*two*.

In testimony whereof I hereunto subscribe my name and affix the seal of the said supreme court, special term for orphans' court business, this *29th* day of *June*, anno Domini *1892*.

[SEAL.] L. P. WRIGHT,
Register of Wills for District of Columbia and ex Officio Clerk of the said Special Term for Orphans' Court Business.

* * * * * * *

Answer of the Hospital of the University of Penn.

Filed January 6th, 1896.

In the Supreme Court of the District of Columbia.

THE AMERICAN SECURITY AND TRUST COMPANY, a Corporation, Trustee under the Last Will and Testament of Mary E. Ruth, Deceased, Complainant,
vs.
MARY SPENCER NOBLE, PATTIE BELLE Tilghman, Jonathan Perry Harrison, Jr., a Minor; Samuel Alexander Harrison and Lucy Bird Harrison, Minors; Bradford O. Harrison, Lydia Caroline Harrison, a Minor; Eleanor Susanna Willis, Robert Leigh Spencer, Webster Lindsley Spencer, Katherine C. Spencer, Emily H. Hayden, The Hospital of the University of Pennsylvania, The Home for Incurables, and Emeline Colville, Defendants.
} In Equity. No. 16834, Docket No. 39.

The answer of the defendant The Hospital of the University of Pennsylvania.

1.

This defendant admits the allegations contained in the first paragraph of the bill.

2.

This defendant admits the allegations contained in the second paragraph of the bill. Further answering, this defendant says it is entitled as legatee to the sum of five thousand dollars ($5,000.00) under the will of the said Mary E. Ruth, deceased, and claims all of its rights in and to said sum of money as legatee.

3.

In reply to the allegations contained in the third paragraph of the bill, this defendant admits the same.

4.

This defendant has no personal knowledge of the allegations contained in the fourth paragraph of the bill, but believes the same to be true and on information and belief admits the same.

5.

This defendant has no personal knowledge of the allegations contained in the fifth paragraph of the bill, but on information and belief admits the same to be true.

6.

In reply to the allegations contained in the sixth paragraph of the bill, this defendant has no knowledge thereof and can neither admit nor deny the same, but asks for proof as to the truth of the said allegations.

7.

In reply to the allegations contained in the seventh paragraph of the bill, this defendant admits that it is a legatee under the will of the said Mary E. Ruth, deceased, to the extent of five thousand dollars ($5,000.00), and asks that the same and all increase thereon may be by the decree of this honorable court *be* directed to be paid over to this defendant by the complainant as executor of said will. This defendant has no knowledge of the other facts alleged in the said seventh paragraph of the bill, and neither admits nor denies the same.

8.

In reply to the allegations contained in the eight- paragraph of the bill, this defendant on information and belief admits the same to be true.

9.

In reply to the allegations contained in the ninth paragraph of the bill, this defendant denies that it is an ambiguity in the said will with reference to the legacy to this defendant, but this defendant is plainly and unquestionably entitled to said legacy, and asks that by decree of this honorable court the same and all increase

13 thereon may be directed to be paid over to it by the complainant. This defendant neither admits nor denies the other allegations contained in this paragraph, but calls for proof of the same.

And this defendant, having fully answered, prays to be hence discharged with its reasonable costs in this cause incurred.

HENRY WISE GARNETT,
Sol'r for Def't The Hospital of the University of Pennsylvania.

Separate Answer of the Home for Incurables.

Filed January 7, 1896.

In the Supreme Court of the District of Columbia.

THE AMERICAN SECURITY AND TRUST COMPANY, a Corporation, Trustee under the Last Will and Testament of Mary E. Ruth, Deceased, Complainant, *vs.* MARY SPENCER NOBLE *et al.*, Defendants.	In Equity. No. 16834.

Separate answer of the Home for Incurables.

The separate answer of The Home for Incurables (a New York corporation), one of the defendants, to the bill of complaint in the above-entitled cause, reserving all right of exception and objection to defects in said bill, respectfully shows to the court as follows:

First. On information and belief this defendant admits the averments contained in the first paragraph of said bill.

Second. This defendant likewise admits the averments of fact contained in the second paragraph of said bill, but does not admit the construction in said paragraph placed upon the codicil to the will of Mary E. Ruth, which said codicil is there alleged to have revoked and annulled the bequest of devise made in said will to this defendant; and this defendant says that it is advised by legal counsel that the construction of said codicil is matter of law which this defendant is not required to answer.

Third. This defendant admits the averments contained in the third paragraph of said bill, but craves leave to refer when necessary to the originals of the records referred to in said bill.

Fourth, fifth, and sixth. As to the averments contained in the fourth, fifth, and sixth paragraphs of said bill, as to the proceedings of complainant and as to the next of kin of testatrix, this defendant says it is without knowledge and can neither admit nor deny the same.

Seventh and eight-. This defendant admits the averments contained in the seventh and eight- paragraphs of said bill.

Ninth. This defendant admits that there is ambiguity apparent upon the face of the said will and codicil, taken together, and joins

14 in the prayer of the complainant for the construction of said will and codicil. It submits that thereupon it will appear that the residuary devise and bequest to this defendant is not revoked, or if revoked at all only to the extent of the five thousand dollars ($5,000) mentioned in said codicil.

Tenth. Further answering said bill, this defendant avers that it is a charitable corporation, duly incorporated and existing under the laws of the State of New York; that although by statutes in force in said State the amount of property which may be held by charitable corporations in the State of New York is limited to three million dollars ($3,000,000) and the yearly income that may be derived therefrom is restricted to five hundred thousand dollars ($500,000), nevertheless the property, real and personal, held and owned by this defendant does not exceed in value the sum of about seven hundred and fifty thousand dollars ($750,000) and the yearly income derived therefrom does not exceed the sum of about sixty thousand dollars ($60,000), and this defendant says it is competent under the laws of New York to take and hold the whole of the residuary estate of said Mary E. Ruth, deceased, for the purposes in said will specified.

Having thus answered, this defendant respectfully submits its rights in the premises to the protection of this honorable court.

HOME FOR INCURABLES,
By G. SHERMAN, *Treasurer.*

J. S. FLANNERY,
Solicitor for Defendant The Home for Incurables.

STATE OF NEW YORK, }
City of New York, } ss.:

I, George Sherman, do solemnly swear that I am the treasurer of The Home for Incurables, a New York corporation and one of the defendants in the above-entitled cause; that I have read the answer by me subscribed in the name and on behalf of said corporation and know the contents thereof, and that the facts therein stated upon my personal knowledge are true and those stated upon information and belief I believe to be true.

G. SHERMAN.

Sworn and subscribed to before me this 4th day of January, A. D. 1896.

[SEAL.] ADDISON GARDNER,
Notary Public (No. 105), N. Y. County.

STATE OF NEW YORK, }
City and County of New York, } ss.:

I, Henry D. Purroy, clerk of the city and county of New York, and also clerk of the supreme court for the said city and
[SEAL.] county, the same being a court of record, do hereby certify that Addison Gardner, before whom the annexed deposition was taken, was at the time of taking the same a notary public

15 of New York, dwelling in said city and county, duly appointed and sworn and authorized to administer oaths to be used in any court in said State and for general purposes; that I am well acquainted with the handwriting of said notary, and that his signature thereto is genuine, as I verily believe.

In testimony whereof I have hereunto set my hand and affixed the seal of said court and county the 6 day of Jan'y, 1896.

HENRY D. PURROY, *Clerk.*

Separate Answer and Demurrer of Emeline Colville.

Filed January 17, 1896.

In the Supreme Court of the District of Columbia.

THE AMERICAN SECURITY AND TRUST COMPANY, &c.,
vs.
MARY SPENCER NOBLE *et al.*
} Equity. No. 16834.

The separate answer of Emeline Colville, one of the defendants in the above-named cause.

First.

The defendant has no knowledge enabling her to admit or deny the allegations of the incorporation of the above-named complainant; she admits that the suit is brought as trustee under the last will and testament of Mary E. Ruth, deceased.

Second.

This defendant has no personal knowledge as to the date of the death of the said Mary E. Ruth. This defendant admits the correctness of the remaining allegation of this paragraph.

Third.

This defendant has no knowledge of the matters alleged in the third paragraph, but believes them to be correctly stated.

Fourth.

This defendant has no knowledge of the matters contained in this paragraph, and, so far as the same may be material, calls for strict proof thereof.

Fifth.

This defendant has no knowledge of the matters alleged in the fifth paragraph, and, as far as the same may be material, calls for strict proof thereof.

Sixth.

This defendant demurs to the allegations contained in the sixth paragraph, and for cause of demurrer says that the persons therein named and alleged to be next of kin and heirs-at-law of the said Mary E. Ruth, deceased, are not and cannot be proper parties to this proceeding for the reason that the said Mary E. Ruth, deceased, in and by her last will and testament and codicil thereto has made a complete disposition of all her property, real and personal, and none of the persons enumerated in said paragraph sixth are in any manner referred to as legatees or devisees in said last will and testament and codicil thereto and have no interest in said estate.

Seventh.

This defendant admits the allegations contained in the seventh paragraph of the bill of complaint.

Eight-.

This defendant has no knowledge of the allegations contained in the eight- paragraph of said bill, but believes them to be correctly stated.

Ninth.

This defendant denies that said will and codicil are ambiguous and inconsistent, or that if there is any ambiguity it is patent on the face of the instrument, and therefor- resolvable by the rules of construction, but says that said will and codicil show a plain and manifest intention on the part of the testatrix to dispose of all her property, real and personal, of every nature and kind, then owned or thereafter acquired, and wherever situate, and that by said will and codicil the said testatrix carried out such intention and has thereby validly disposed of all her said estate, and that by the provisions of said will and codicil this defendant is entitled to all the residue of said estate remaining after the payment of the legacy of $5,000.00 thereby given to the Hospital of the University of Pennsylvania.

Further answering said bill of complaint, this defendant says that it may be necessary to refer this cause to the auditor to state an account for distribution, and that the complainant should be required to furnish an account in this cause, and that this defendant should be permitted to elect to accept as correct said account or to except thereto, and only in the latter event should the cause go to the auditor.

Further answering said bill of complaint, this defendant says that what expense and commission are reasonable or necessary will be acqueis-d in by this defendant, but she says that she is advised and believes, and upon such advice and belief answers, that the complainant is not entitled to an allowance for counsel fees.

And, having fully answered, this defendant pray- to be hence dismissed with her necessary costs.

EMELINE COLVILLE.

EDWIN SUTHERLAND,
Sol'r for Emeline Colville.

17 STATE OF NEW YORK, } ss:
City of New York, }

I, Emeline Colville, do solemnly swear that I am one of the defendants in the above-entitled cause; that I have read the answer by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true and those stated upon information and belief I believe to be true.

EMELINE COLVILLE.

Sworn and subscribed to before me this 14th day of January, 1896.

LOUIS F. RYAN,
[SEAL.] *Notary Public* (200), *New York County.*

Answer of Defendants Mary Spencer Noble & Pattie Belle Tilghman.

Filed January 21, 1896.

In the Supreme Court of the District of Columbia.

THE AMERICAN SECURITY & TRUST COMPANY, a Corporation, Trustee under the Last Will and Testament of Mary E. Ruth, Deceased,
vs.
MARY SPENCER NOBLE *et al.*
} In Equity. No. 16834.

To the honorable supreme court of the District of Columbia, holding a special term in equity:

The joint and several answer of the defendants Mary Spencer Noble, Pattie Belle Tilghman, Bradford O. Harrison, and Eleanor Susanna Willis respectfully represents:

First.

That they are citizens of the United States and resident—Mary Spencer Noble, of Baltimore, Maryland; Pattie Belle Tilghman, in Easton, Maryland; Bradford O. Harrison, in St. Louis, Missouri, and Eleanor Susanna Willis, in St. Michaels, Maryland, and that they are sued in this case in their own right as heirs-at-law of Mary E. Ruth, deceased.

Second.

That they admit that the complainant, The American Security and Trust Company, is a corporation created by an act of Congress approved October 1st, A. D. 1890, in manner as set forth in the first paragraph of the said original bill, and that the said company is under the said last will and testament of Mary E. Ruth, deceased, executor of said last will, and that letters testamentary have been issued to the said company in due form by the orphans' court of the District of Columbia.

Third.

That they admit that the said Mary E. Ruth, a resident of the District of Columbia, died on the 16th day of June, A. D. 1892, having made her last will and testament, in which she constituted the complainant her executor and gave, devised, and bequeathed to it all her estate—real, personal, and mixed—upon the trusts set forth in said will, which trusts are repeated in the second paragraph of the original bill filed herein; and these respondents admit that the said trusts declared in and by said will are properly and fully recited in the aforesaid paragraph of the original bill; that said respondents admit that the said Mary E. Ruth did in and by her codicil to said will, dated on the said 1st day of June, A. D. 1892, and duly executed, annul one of the bequests in her said will and did add by way of change thereof in said codicil the bequest made part of the said second paragraph of the said original bill.

Fourth.

Respondents admit that letters testamentary were granted unto the complainant on the 28th day of June, A. D. 1892, by the orphans' court of the District of Columbia, and that the complainant, upon the issuing of said letters, entered upon the performance of the trusts reposed in it by the said will and codicil and the said letters testamentary.

Fifth.

Respondents, further answering, say that they are not acquainted with the nature, character, or location of the property, real and personal, belonging to the said Mary E. Ruth, deceased, but that they believe that the statement thereof contained in the fourth paragraph of the said original bill is correct, and that the inventory of the personal property filed in the orphans' court and the account of the sales of real estate made or to be made by the said complainant are true, and that the money arising from such sales has been invested in the manner set forth in the said section of said bill, and *are* now held by the complainant under the trusts contained and set forth in the said will of Mary E. Ruth.

Sixth.

Respondents, in reply to the fifth, sixth, seventh, and eight- paragraphs of the original bill, say that they admit the allegations contained therein to be true, so far as they can be expected to know the truth thereof.

Seventh.

The respondents, further answering the allegations of the said bill, deny that any ambiguity or inconsistency appears upon the face of the said will and codicil, and to the contrary thereof aver that the provisions of the said will and codicil are clear and free from doubt, and that there is no reason why the estate of the said

19 Mary E. Ruth should not be distributed under the provisions of her will without the intervention of this court, but that said respondents, believing that it will be better for all parties to have any questions that may arise in the construction of said will referred to and passed upon by this honorable court, do hereby submit their rights to the said court and its jurisdiction.

And, having fully answered, the said defendants pray to be hence dismissed with their reasonable costs; and so, as in duty bound, they will ever pray, &c.

MARY SPENCER NOBLE.
PATTIE BELLE TILGHMAN.

STATE OF MARYLAND, *Talbot County,* } *To wit:*

I do solemnly swear that I have read the aforegoing answer by me subscribed and know the contents thereof; that the facts therein stated upon my personal knowledge are true and those stated upon information and belief I believe to be true.

PATTIE BELLE TILGHMAN.

Subscribed and sworn to before me this 9th day od January, A. D. 1896.

GEORGE E. S. LOVEDAY,
[SEAL.] *Notary Public.*

STATE OF MARYLAND, *City of Baltimore,* } *ss:*

I do solemnly swear that I have read the aforegoing answer by me subscribed and know the contents thereof; that the facts therein stated upon my personal knowledge are true and those stated upon information and belief I believe to be true.

MARY SPENCER NOBLE.

STATE OF MARYLAND, *City of Baltimore,* } *ss:*

Sworn and subscribed before me this 17 day of January, 1896.

[Seal of Felix R. Sullivan, No. 25 South Street, Baltimore, Md.]

FELIX R. SULLIVAN,
Notary Public.

20 *Answer of Bradford O. Harrison.*

Filed January 21, 1896.

In the Supreme Court of the District of Columbia.

THE AMERICAN SECURITY & TRUST COMPANY, a Corporation, Trustee under the Last Will and Testament of Mary E. Ruth, Deceased, *vs.* MARY SPENCER NOBLE *et al.*	In Equity.	No. 16834.

To the honorable supreme court of the District of Columbia, holding a special term in equity:

The joint and several answer of the defendants Mary Spencer Noble, Pattie Belle Tilghman, Bradford O. Harrison, and Eleanor Susanna Willis respectfully represents:

First.

That they are citizens of the United States and resident—Mary Spencer Noble, of Baltimore, Maryland; Pattie Belle Tilghman, in Easton, Maryland; Bradford O. Harrison, in St. Louis, Missouri, and Eleanor Susanna Willis, in St. Michaels, Maryland, and that they are sued in this case in their own right as heirs-at-laws of Mary E. Ruth, deceased.

Second.

That they admit that the complainant, The American Security and Trust Company, is a corporation created by an act of Congress approved October 1st, A. D. 1890, in manner as set forth in the first paragraph of the said original bill, and that the said company is, under the said last will and testament of Mary E. Ruth, deceased, executor of said last will, and that letters testamentary have been issued to the said company in due form by the orphans' court of the District of Columbia.

Third.

That they admit that the said Mary E. Ruth, a resident of the District of Columbia, died on the 16th day of June, A. D. 1892, having made her last will and testament, in which she constituted the complainant her executor and gave, devised, and bequeathed to it all her estate—real, personal, and mixed—upon the trusts set forth in said will, which trusts are repeated in the second paragraph of the original bill filed herein; and these respondents admit that the said trusts declared in and by said will are properly and fully recited in the aforesaid paragraph of the original bill; that said respondents admit that the said Mary E. Ruth did in and by her codicil to said will, dated on the said 1st day of June, A. D. 1892, and duly exe-

21 cuted, annul one of the bequests in her said will, and did add by way of change thereof in said codicil the bequest made part of the said second paragraph of the said original bill.

Fourth.

Respondents admit that letters testamentary were granted unto the complainant on the 28th day of June, A. D. 1892, by the orphans' court of the District of Columbia, and that the complainant, upon the issuing of said letters, enter- upon the performance of the trusts reposed in it by the said will and codicil and the said letters testamentary.

Fifth.

Respondents, further answering, say that they are not acquainted with the nature, character, or location of the property, real and personal, belonging to the said Mary E. Ruth, deceased, but that they believe that the statement thereof contained in the fourth paragraph of the said original bill is correct, and that the inventory of the personal property filed in the orphans' court and the account of the sales of real estate made or to be made by the said complainant are true, and that the money arising from such sales has been invested in the manner set forth in the said section of said bill and *are* now held by the complainant under the trusts contained and set forth in the said will of Mary E. Ruth.

Sixth.

Respondent-, in reply to the fifth, sixth, seventh, and eight- paragraphs of the original bill, say that they admit the allegations contained therein to be true so far as they can be expected to know the truth thereof.

Seventh.

The respondent-, further answering the allegations of the said bill, deny that any ambiguity or inconsistency appears upon the face of the said will and codicil, and to the contrary thereof aver that the provisions of the said will are clear and free from doubt, and that there is no reason why the estate of the said Mary E. Ruth should not be distributed under the provisions of her will without the intervention of this court, but that said respondents, believing that it will be better for all parties to have any questions that may arise in the construction of the said will referred to and passed upon by this honorable court, do hereby submit their rights to the said court and its jurisdiction.

And, having fully answered, the said defendants pray to be hence dismissed with their reasonable costs; and, so as in duty bound, they will ever pray, &c.

BRADFORD O. HARRISON.

WEBB & WEBB, *Sol'rs.*

The complainant hereby consents that the answer of Bradford O. Harrison in the above cause may be signed by his solicitor,

22 and it hereby further waives affidavit to said answer and consents that it may be filed in manner and form as above.

WM. A. McKENNEY,
Solicitor Amr. Sec. & Tr. Co., &c., Complainant.

Answer of Defendant Eleanor Susanna Willis.

Filed January 21, 1896.

In the Supreme Court of the District of Columbia.

THE AMERICAN SECURITY & TRUST COMPANY, a Corporation, Trustee under the Last Will and Testament of Mary E. Ruth, Deceased,
vs.
MARY SPENCER NOBLE *et al.*
} In Equity. No. 16834.

To the honorable supreme court of the District of Columbia, holding a special term in equity:

The joint and several answer of the defendants Mary Spencer Noble, Pattie Belle Tilghman, Bradford O. Harrison, and Eleanor Susanna Willis respectfully represents:

First.

That they are citizens of the United States and resident—Mary Spencer Noble, of Baltimore, Maryland; Pattie Belle Tilghman, in Easton, Maryland; Bradford O. Harrison, in St. Louis, Missouri, and Eleanor Susanna Willis, in St. Michaels, and that they are sued in this case in their own right as heirs-at-law of Mary E. Ruth, deceased.

Second.

That they admit that the complainant, The American Security and Trust Company, is a corporation created by an act of Congress approved October 1st, A. D. 1890, in manner as set forth in the first paragraph of the said original bill, and that the said company is under the said last will and testament of Mary E. Ruth, deceased, executor of said last will, and that letters testamentary have been issued to the said company in due form by the orphans' court of the District of Columbia.

Third.

That they admit that the said Mary E. Ruth, a resident of the District of Columbia, died on the 16th day of June, A. D. 1892, having made her last will and testament, in which she constituted the complainant her executor and gave, devised, and bequeathed to it all her estate—real, personal, and mixed—upon the trusts set forth in said will, which trusts are repeated in the second paragraph of the

23 original bill filed herein; and these respondents admit that the said trusts declared in and by said will are properly and fully recited in the aforesaid paragraph of the original bill; that said respondents admit that the said Mary E. Ruth did in and by her codicil to said will, dated on the said 1st day of June, A. D. 1892, and duly executed, annul one of the bequests in her said will, and did add by way of change thereof in said codicil the bequest made part of the said second paragraph of the said original bill.

Fourth.

Respondents admit that letters testamentary were granted unto the complainant on the 28th day of June, A. D. 1892, by the orphans' court of the District of Columbia, and that the complainant, upon the issuing of said letters, enter- upon the performance of the trusts reposed in it by the said will and codicil and the said letters testamentary.

Fifth.

Respondents, further answering, say that they are not acquainted with the nature, character, or location of the property, real and personal, belonging to the said Mary E. Ruth, deceased, but that they believe that the statement thereof contained in the fourth paragraph of the said original bill is correct, and that the inventory of the personal property filed in the orphans' court and the account of the sales of real estate made or to be made by the said complainant are true, and that the money arising from such sales has been invested in the manner set forth in the said section of said bill and *are* now held by the complainant under the trusts contained and set forth in the said will of Mary E. Ruth.

Sixth.

Respondents, in reply to the fifth, sixth, seventh, and eight- paragraphs of the original bill, say that they admit the allegations contained therein to be true so far as they can be expected to know the truth thereof.

Seventh.

The respondent-, further answering the allegations of the said bill, deny that any ambiguity or inconsistency appears upon the face of the said will and codicil, and to the contrary thereof aver that the provisions of the said will are clear and free from doubt, and that there is no reason why the estate of the said Mary E. Ruth should not be distributed under the provisions of her will without the intervention of this court, but that said respondents, believing that it will be better for all parties to have any questions that may arise in the construction of said will referred to and passed upon by this honorable court, do hereby submit their rights to the said court and its jurisdiction.

And, having fully answered, the said defendants pray to be hence

24 dismissed with their reasonable costs; and so, as in duty bound, they will ever pray, &c.

ELEANOR SUSANNA WILLIS.

DISTRICT OF COLUMBIA, *To wit:*

I do solemnly swear that I have read the foregoing answer by me subscribed and know the contents thereof; that the facts therein stated upon my personal knowledge are true and those stated upon information and belief I believe to be true.

ELEANOR SUSANNA WILLIS.

Subscribed and sworn to before me this 13 day of January, A. D. 1896.

EDWIN P. SPARKS, *J. P.*

STATE OF MARYLAND, *Talbot County,* } *To wit:*

I hereby certify that Edwin P. Sparks, Esquire, before whom the annexed affidavit was made, was at the time of so doing a justice of the peace of the State of Maryland in and for Talbot county, duly commissioned and sworn, and authorized by law to administer oaths and take acknowledgments, and that his signature thereto is genuine.

In testimony whereof I hereto set my hand and affix
[SEAL.] the seal of the circuit court for Talbot county this 14th day of Jan., 1896.

THOS. HUGHLETT,
Clerk Circuit Court for Talbot County.

Answer of Guardian ad Litem, F. Walter Bra-denburg, Jr.

Filed January 30, 1896.

In the Supreme Court of the District of Columbia, Holding a Special Term in Equity.

AMERICAN SECURITY & TRUST CO., Trustee of the Last Will and Testament of Mary E. Ruth, Deceased,
vs.
MARY SPENCER NOBLE *et al.*
} In Equity. No. 16834.

The answer of the defendants Jonathan Perry Harrison, Junior, Samuel Alexander Harrison, Lucy Bird Harrison, and Lydia Caroline Harrison, infants under the age of twenty-one years, by F. Walter Brandenburg, Jr., their guardian *ad litem*, to the bill of complaint filed in the above-entitled cause.

These defendants cannot admit any of the matters and things alleged in said bill, and, being infants of tender years, submit their rights to the protection of this court.

F. WALTER BRANDENBURG, JR.

25 DISTRICT OF COLUMBIA, *To wit:*

F. Walter Brandenburg, Jr., being duly sworn, deposes and says that the matters and facts set forth in the foregoing answer are true to the best of his knowledge, information, and belief.

F. WALTER BRANDENBURG, JR.

Subscribed and sworn to before me this 30th day of January, A. D. 1896.

[SEAL.] HENRY R. ELLIOTT,
U. S. Comm'r for the Dist. of Col.

Answer of Defendants Mary S. Noble, Pattie Tilghman, Bradford O. Harrison, and Eleanor S. Willis.

Filed January 31, 1896.

In the Supreme Court of the District of Columbia, Holding a Special Term in Equity.

AMERICAN SECURITY & TRUST CO., Trustee of the Last Will and Testament of Mary E. Ruth, Deceased,
vs.
MARY SPENCER NOBLE *et al.*
} In Equity. No. 16834.

To the honorable supreme court of the District of Columbia, holding a special term in equity:

The joint and several amended answer of Mary Spencer Noble, Pattie Belle Tilghman, Bradford O. Harrison, and Eleanor Susanna Willis respectfully represents:

Your petitioners hereby repeat the allegations and assertions contained in the first six paragraphs of their answers on file in the above-entitled cause and amend the seventh paragraph as follows:

Seventh.

Respondents, further answering the allegations of said bill, deny that any ambiguity or any inconsistency appears upon the face of the said will and codicil, and to the contrary thereof aver that the provisions of the said will are clear and free from doubt; and your respondents assert that while under the terms of the will of the said Mary E. Ruth in the event of the death of Sophia Yeungling Houston the whole of her said estate, with the exception of a legacy of five thousand ($5,000) dollars to the defendant The Hospital of the University of Pennsylvania, was given to the defendant The Home for Incurables, at Fordham, New York city, in the State of New York, yet the codicil to the said will revoked and annulled the said gift and bequest to the Home for Incurables, at Fordham, New York city, in the State of New York, and gave a legacy of five thousand ($5,000) dollars to the defendant Emeline Colville. Your respond-

26 ents therefore claim and maintain that under and by the terms of the said will and the codicil thereto the whole estate of the said Mary E. Ruth—real, personal, and mixed—after the payment of the two legacies of five thousand ($5,000) dollars each—one to the defendant The Hospital of the University of Pennsylvania and the other to the defendant Emeline Colville—passes to the heirs of the said Mary E. Ruth, all of whom are parties defendant in the above-entitled cause; that there is no reason why the estate of the said Mary E. Ruth should not be *disturbed* under the provisions of her said will without the intervention of this court, but the said respondents, believing that it would be better for all parties to have any questions that may arise in the construction of the said will referred to and passed upon by this honorable court, without confessing, admitting, or waiving any claim, protest, or obligation they may have herein, do hereby submit their rights to the said court and its jurisdiction.

And, having fully answered, the said defendants pray to be hence dismissed with their reasonable costs and expenses; and, so as in duty bound, they will ever pray, &c.

WEBB, WEBB & LINDSLEY,
Solicitors for Defendants.

We consent to the filing of this answer and waive affidavit thereto.

WM. A. McKENNEY,
Sol'r for Compl't.
J. S. FLANNERY,
Sol'r for Home for Incurables of N. Y.

Without waiving any right of Emeline Colville or conceding any matter of fact or of law, I consent to the filing of this answer and waive affidavit thereto.

EDWIN SUTHERLAND,
Sol'r for Colville.

Answers of R. L. Spencer, W. L. Spencer, C. C. Spencer, and E. H. Hayden.

Filed February 4, 1896.

In the Supreme Court of the District of Columbia.

THE AMERICAN SECURITY & TRUST CO., &c.,
vs.
MARY S. NOBLE *et al.*
} No. 16834. In Equity.

The joint and separate answers of Robert Leigh Spencer, Webster Lindsley Spencer, Catherine C. Spencer, and Emily H. Hayden to the bill of complaint of American Security and Trust Company, trustee under the last will and testament of Mary E. Ruth, deceased, filed in this honorable court against them and others.

These defendants, answering, say:

1.

That they admit the allegations contained in the first paragraph of said bill.

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2.

That they admit the allegations contained in the second paragraph of said bill.

3.

That they admit the allegations contained in the third paragraph of said bill.

4.

That they can neither admit nor deny the allegations contained in the fourth paragraph of said bill, and require strict proof of the same.

5.

That they admit the allegations contained in the fifth paragraph of said bill.

6.

That these respondents are the only children of Ann C. B. Spencer, deceased, now living or living at the time of the death of said Mary E. Ruth, and that their mother, Ann C. B. Spencer, was a half sister of said Mary E. Ruth, deceased, by the same father, but different mothers; that upon general information and common repute they believe the other allegations made in said sixth paragraph of said bill are true, but have no personal knowledge of the same.

6.

That they admit the allegations contained in the seventh paragraph of said bill.

8.

That they can neither admit nor deny the allegations contained in the eight- paragraph of said bill, and require full proof of the same.

9.

That these respondents, answering the ninth paragraph of said bill, deny that there is any ambiguity in said will and codicil, and respectfully submit that under the established rules of construction the said will and codicil plainly say, and must therefore be interpreted to mean,—

That for the purposes of the trust therein created the entire estate was by said will converted into personal property, and, as these respondents admit, it was in fact so actually converted into personal property and invested by said trustee.

That they further contend and allege that the said Sophia Yingling Houston was properly the equitable life tenant of said estate, the prior contingency for the termination of said equitable estate in her, as mentioned in said will, not in fact having arisen.

That upon the death of said Sophia Yingling Huston, under said

28 will $5,000 was and still is, these respondents are informed, due and payable to Hospital of the University of Pennsylvania.

That under the said codicil the bequest in the wall to the Home for Incurables, at Fordham, New York, was and is explicitly and absolutely annulled.

That by said codicil the further sum of $5,000 was bequeathed to Emiline Colville, and to that sum, and to that only, is she now entitled.

That as to the remainder of said estate, after the expiration of the equitable life interest and the payment of the said two legacies of $5,000 each, the said Mary E. Ruth, deceased, is intestate, and the said residue of her estate belongs to her heirs-at-law and next of kin, or to the heirs-at-law and next of kin of the said Sarah Yingling Huston, grand-daughter of said Mary E. Ruth, who was living at the time of death of said Mary E. Ruth.

That the living heirs-at-law and next of kin of Mary E. Ruth and the heirs-at-law and next of kin of Sophia Yingling Huston are in both cases the same parties—that is to say, the children of the four brothers and sisters of said Mary E. Ruth, deceased, as set forth in said bill of complaint.

That the said residue of said estate does, in any aspect of the case, belong to and should be distributed to the children of said deceased brothers and sisters of said Mary E. Ruth, and these respondents therefore claim each of them one-fourth of said residue.

That these respondents join in the prayer that the papers in this cause be referred to the auditor to state an account for distribution.

And, having fully answered said bill, these respondents pray to be hence dismissed with their reasonable costs.

And, as in duty bound, &c.

ROBERT LEIGH SPENCER.
WEBSTER LINDSLEY SPENCER.
KATHERINE C. SPENCER.
EMILY H. HAYDEN.

Witness:

CHAS. S. HAYDEN.

Feb. 3, 1896.

CHARLES S. HAYDEN,
Solicitor for These Respondents.

29 *Replication.*

Filed March 3, 1896.

In the Supreme Court of the District of Columbia.

THE AMERICAN SECURITY AND TRUST COMPANY, a Corporation, Trustee, etc., of Mary E. Ruth, Deceased, Complainant,
vs.
MARY SPENCER NOBLE *et als.*, Defendants. } In Equity. No. 16834.

Replication.

The plaintiff joins issue on the answers of the defendants and each and every of them.

WM. A. McKENNEY,
Solicitor for Complainants.

Decree.

Filed June 25, 1896.

Supreme Court of the District of Columbia.

THE AMERICAN SECURITY AND TRUST COMPANY
v.
MARY SPENCER NOBLE & Others. } In Equity. No. 16834, Docket No. 39.

This cause having been argued and submitted upon the pleadings and having been duly considered—

It is by the court, this 25th day of June, A. D. 1890, ordered, adjudged, and decreed that the legal effect of the codicil executed by the testatrix, Mary Eleanor Ruth, on the 1st day of June, 1892, to her will of the same date, as shown in the proceedings, was to revoke the legacy of five thousand dollars given in and by said will to the Hospital of the University of Pennsylvania and to substitute Mrs. Emeline Colville as the legatee of said sum of five thousand dollars in the place and stead of said Hospital of the University of Pennsylvania, but not to revoke the residuary bequest in said will contained in favor of the "Home for Incurables," at Fordham, in New York city.

It is further ordered that this cause be referred to the auditor to state an account of the estate of said Mary Eleanor Ruth, for which the complainant is accountable, for distribution according to the aforegoing construction of the said will and codicil, making all proper allowance to the complainant for its necessary expenses in connection with said estate, the costs incurred in this cause, including counsel fees, and a reasonable compensation for its services as trustee.

W. S. COX, *J.*

1896, July 2.—Appeal by Emeline Colville, defendant.

In the Supreme Court of the District of Columbia.

AMERICAN SECURITY AND TRUST COMPANY, Trustee, &c., *vs.* MARY SPENCER NOBLE *et al.* } No. 16834. In Equity.

The President of the United States to American Security and Trust Company, trustee, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal noted in the supreme court of the District of Columbia on the 2nd day of July, 1896, wherein Emeline Colville is appellant and you are appellee, to show cause, if any there be, why the judgment *decree* rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 6th day of July, in the year of our Lord one thousand eight hundred and ninety-six.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 7 day of July, 1896.

WM. A. McKENNEY,
Attorney for Appellee.

Memorandum.

1896, July 8.—Appeal by defendant Hospital of Pennsylvania.

Order Allowing $50.00 *in Lieu of Bond to Secure Costs of an Appeal.*

Filed July 9, 1896.

In the Supreme Court of the District of Columbia.

AMERICAN SECURITY AND TRUST CO. *vs.* MARY S. NOBLE *et al.* } Equity. No. 16834.

It is this 9th day of July, 1896, ordered that the defendants in the above-entitled case be allowed to deposit fifty ($50.00) dollars in lieu of giving bond to secure the costs of an appeal to the Court of Appeals.

CHAS. C. COLE,
Asso. Justice.

31 *Appeal by Robert Leigh Spencer et al.*

Filed July 10, 1896.

In the Supreme Court of the District of Columbia, Holding a Special Term in Equity.

AMERICAN SECURITY & TRUST CO.
vs.
MARY SPENCER NOBLE *et al.*
} In Equity. No. 16834.

The clerk will please note an appeal from a decree rendered in the above-entitled cause on the 25th day of June, 1896, on behalf of the defendants Robert Leight Spencer, Webster Lindsley Spencer, Katherine C. Spencer, and Emily H. Hayden, and issue citation to the appellees, the complainant, and defendant No. 14.

CHARLES S. HAYDEN,
Solicitors for Defendants.

Appeal by Mary Spencer Noble.

Filed July 10, 1896.

In the Supreme Court of the District of Columbia, Holding a Special Term in Equity.

AMERICAN SECURITY & TRUST CO.
vs.
MARY SPENCER NOBLE *et al.*
} In Equity. No. 16834.

The clerk will please note an appeal from the decree rendered in the above-entitled cause on the 25th day of June, 1896, on behalf of the defendants Mary Spencer Noble, Pattie Belle Tilghman, Eleanor Susanna Willis, and Bradford O. Harrison and on behalf of the infant defendants herein, Jonathan Perry Harrison, Jr., Samuel Alexander Harrison, Lucy Bird Harrison, and Lydia Caroline Harrison, through F. Walter Brandenburg, Jr., their guardian *ad litem*, and issue citation to the appellees, the complainant, and defendant No. 14.

WEBB, WEBB & LINDSLEY,
Solicitors for Defendants.

Refusal of Defendant Home for Incurables to Join in Appeal.

Filed July 10, 1896.

In the Supreme Court of the District of Columbia.

AMERICAN SECURITY & TRUST CO.
vs.
MARY S. NOBLE *et al.*
} Equity. No. 16834.

The defendant The Home for Incurables, at Fordham, New York, being satisfied with the decree passed in the above-entitled cause on

32 the 25th of June, 1896, refuses to join in any appeal from said decree.

J. S. FLANNERY,
Sol'r for Home for Incurables of N. Y.

In the Supreme Court of the District of Columbia.

THE AMERICAN SECURITY AND TRUST COMPANY (a Corporation)
vs.
MARY SPENCER NOBLE *et al.*
} No. 16834. In Equity.

The President of the United States to The American Security and Trust Company, a corporation, and The Home for Incurables, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal filed in supreme court of the District of Columbia on the 10th day of July, 1896, wherein Mary Spencer Noble, Pattie Belle Tilghman, Jonathan Perry Harrison, Jr., Samuel Alexander Harrison, Lucy Bird Harrison, Bradford O. Harrison, Lydia Caroline Harrison, Eleanor Susanna Willis, Robert Leigh Spencer, Webster Lindsley Spencer, Katharine C. Spencer, Emily H. Hayden, and The Hospital of the University of Pennsylvania are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 10th day of July, in the year of our Lord one thousand eight hundred and ninety-six.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 11th day of July, 1896.

J. S. FLANNERY,
Attorney for Appellee The Home for Incurables.
WM. A. McKENNEY,
Att'y for Appellee The Am. Security & Tr. Co.

Memorandum.

1896, July 14.—$50 deposited by appellants in lieu of bond for appeal.

33 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, } ss:
District of Columbia, }

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify the foregoing pages, numbered from 1 to 97, inclusive, to be true copies of originals in cause No. 16834, in equity, wherein The American Security and Trust Company, a corporation, trustee under the last will and testament of Mary E. Ruth, deceased, is complainant and Mary Spencer Noble *et al.* are defendants, as the same remain upon the files and records of said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 19th day of August, A. D. 1896.

J. R. YOUNG, *Clerk,*
By L. P. WILLIAMS, *Ass't Clerk.*

In the Court of Appeals of the District of Columbia.

EMELINE COLVILLE
vs.
AMERICAN SECURITY AND TRUST COMPANY. } No. 614.

MARY SPENCER NOBLE *et al.*
vs.
AMERICAN SECURITY AND TRUST COMPANY *et al.* } No. 615.

Now comes the appellant The Hospital of the University of Pennsylvania and represents that errors from which it prosecutes its appeal in the above-entitled causes are that the court in its decree below interprets the will of Mary E. Ruth, deceased, and a codicil thereto so that the legacy in the said will to the Hospital of the University of Pennsylvania is by the codicil of said will revoked, and this appellant says that the said interpretation is error and the parts of the record filed in the clerk's office of the Court of Appeals in the above-entitled causes which it thinks necessary for consideration of the questions involved and which *it is* necessary to be printed in the above-entitled causes are the following:

The index and the entitling pages, one (1) to eighteen (18), inclusive, of the transcript of record filed in the said clerk's office of the Court of Appeals and pages fifty-nine (59) to ninety-seven (97), inclusive, of the said transcript of record.

And this appellant deems that in order to properly present the case before the Court of Appeals that it is necessary that the said parts of the said transcript of the record be printed and those parts only.

HENRY WISE GARNETT,
Solicitor for Appellant The Hospital of the University of Pennsylvania.

34 We hereby consent and agree that the parts of the record mentioned in the above notice may constitute the record to be printed in the Court of Appeals in the above-entitled causes.

WEBB, WEBB & LINDSLEY,
CHARLES S. HAYDEN,
J. S. FLANNERY,
Sol'r- for Home for Incurables of New York.
WM. A. McKENNEY,
Sol'r for American Security & Trust Co.
EDWIN SUTHERLAND,
Sol'r for Emeline Colville.

Endorsed: Court of Appeals, D. C., October term, 1896. Nos. 614 & 615. Emeline Colville, appellant, *vs.* American Security & Trust Co., and Mary Spencer Noble *et al.*, appellants, *vs.* American Security & Trust Co. *et al.* Assignment of errors by The Hospital of the University of Pa. & stipulation as to printing record. Court of Appeals, District of Columbia. Filed Sep. 9, 1896. Robert Willett, clerk.

Endorsed on cover: District of Columbia supreme court. No. 614. Emeline Colville, appellant, *vs.* American Security and Trust Company, trustee, and, 615, Mary Spencer Noble *et al.*, appellants, *vs.* The American Security and Trust Company, a corporation, *et al.* Court of Appeals, District of Columbia. Filed Aug. 22, 1896. Robert Willett, clerk.

35 TUESDAY, *November 3d, A. D.* 1896.

EMELINE COLVILLE, Appellant,
vs.
AMERICAN SECURITY AND TRUST COMPANY, Trustee, } No. 614.

and

MARY SPENCER NOBLE *et al.*, Appellants,
vs.
THE AMERICAN SECURITY AND TRUST COMPANY, a Corporation, and THE HOME FOR INCURABLES. } No. 615.

Upon motion of Mr. Edwin Sutherland, of counsel for Emeline Colville, it is by the court ordered that the above-entitled causes be assigned for hearing Friday, November 6th, 1896.

THURSDAY, *December 3d, A. D.* 1896.

EMELINE COLVILLE, Appellant,
vs.
AMERICAN SECURITY AND TRUST COMPANY, Trustee, } No. 614.

and

MARY SPENCER NOBLE *et al.*, Appellants,
vs.
THE AMERICAN SECURITY AND TRUST COMPANY, a Corporation, *et al.* } No. 615.

The above-entitled causes are reassigned for hearing on Tuesday, December 8th, 1896.

36 TUESDAY, *December 8th, A. D.* 1896.

EMELINE COLVILLE, Appellant,
vs.
AMERICAN SECURITY AND TRUST COMPANY, Trustee, } No. 614.

and

MARY SPENCER NOBLE, PATTIE BELLE TILGHMAN, Jonathan Perry Harrison, Jr., Samuel Alexander Harrison, Lucy Bird Harrison, Bradford O. Harrison, Lydia Caroline Harrison, Eleanor Susanna Willis, Robert Leigh Spencer, Webster Lindsley Spencer, Katharine C. Spencer, Emily H. Hayden, and The Hospital of the University of Pennsylvania, Appellants,
vs.
THE AMERICAN SECURITY AND TRUST COMPANY, a Corporation, and THE HOME FOR INCURABLES. } No. 615.

The argument in the above-entitled causes was commenced by Mr. Corcoran Thom, attorney for the Hospital of the University of Pennsylvania, and was continued by Mr. H. R. Webb, attorney for the heirs-at-law, and by Mr. George H. Yeaman, attorney for the appellee The Home for Incurables, and by Mr. Edwin Sutherland, attorney for the appellant Emeline Colville.

37 WEDNESDAY, *December 9th, A. D.* 1896.

EMELINE COLVILLE, Appellant,
vs.
AMERICAN SECURITY AND TRUST COMPANY, Trustee, } No. 614.

and

MARY SPENCER NOBLE, PATTIE BELLE TILGHMAN, JONATHAN PERRY HARRISON, JR., SAMUEL ALEXANDER HARRISON, LUCY BIRD HARRISON, BRADFORD O. HARRISON, LYDIA CAROLINE HARRISON, ELEANOR SUSANNA WILLIS, ROBERT LEIGH SPENCER, WEBSTER LINDSLEY SPENCER, KATHARINE C. SPENCER, EMILY H. HAYDEN, and THE HOSPITAL OF THE UNIVERSITY OF PENNSYLVANIA, Appellants,
vs.
THE AMERICAN SECURITY AND TRUST COMPANY, a Corporation, and THE HOME FOR INCURABLES. } No. 615.

The argument in the above-entitled causes was continued by Mr. Edwin Sutherland, attorney for the appellant Emeline Colville, and was concluded by Mr. John Sidney Webb, attorney for the heirs-at-law.

38 EMELINE COLVILLE, Appellant,
vs.
THE AMERICAN SECURITY AND TRUST COMPANY, Trustee. } No. 614.

MARY SPENCER NOBLE and Others, Appellants,
vs.
THE AMERICAN SECURITY AND TRUST COMPANY and Another. } No. 615.

Mr. Justice MORRIS delivered the opinion of the court:

These are cross-appeals by different defendants in a suit instituted on the equity side of the supreme court of the District of Columbia by the appellee The American Security and Trust Company, as trustee, for the purpose of procuring a judicial construction of the last will and testament of Mrs. Mary Eleanor Ruth, who died in the city of Washington on June 16, 1892.

The will in question, or rather the will and codicil to it, both executed on the same day, June 1, 1892—and it is the codicil rather than the will that gives rise to the difficulty sought to be solved in the present proceedings—are as follows:

"I, Mary Eleanor Ruth, residing in the city of Washington and the District of Columbia, being of sound and disposing mind and memory, do make and publish and declare this to be my last will and testament, hereby revoking and making null and void any and all former wills and codicils by me at any time made.

"First—I direct my executor hereinafter named to first pay out of my estate my funeral expenses and all just debts.

"Second.—I give, devise and bequeath all of my estate, real, per-

sonal, or mixed, whether in possession, reversion or remainder, now acquired or hereafter to be acquired and wheresoever situ-
39 ated, to the American Security and Trust Company of Washington city, District of Columbia, its successors and assigns, in trust nevertheless for the following uses and purposes only; that is to say—

"To invest and reinvest the proceeds of my said estate in its discretion from time to time * * * . (Here follow directions in regard to the investment of the property and a provision for the application of the whole and entire income to the use of the grand-daughter of the testatrix for the term of her natural life, which, as the grand-daughter is now dead and the purpose of the provision has ceased, may be omitted.)

"Third.—In the event of the death of my said grand-daughter Sophia Yuengling Huston, or of the occurrence of the prior contingency for the determination of said trust hereinbefore provided in item two, then the trust hereinbefore created and vested in the 'American Security and Trust Company' shall cease and be determined, and so much of my said estate shall thereupon be conveyed and delivered over by said American Security and Trust Company to the Hospital of the University of Pennsylvania as amounts to five thousand dollars, said five thousand dollars to be used by said hospital to endow and forever maintain a first-class perpetual bed in said hospital, in the city of Philadelphia, said bed to be in the name and memory of my beloved son Melancthon Love Ruth.

"All the rest and residue of my said estate of whatever kind, after the payment of said five thousand dollars for the establishment of said perpetual bed in said hospital, I give, devise and bequeath to the 'Home for Incurables' at Fordham, New York city, in the State of New York, its successors and assigns forever, to be used by said 'Home for Incurables' to endow and forever maintain one or more beds in said home in the name and memory of my beloved son Melancthon Love Ruth.

"Fourth—(Appoints guardians for her grand-daughter.)

"Fifth—I hereby nominate and appoint the 'American Security and Trust Company,' of Washington city, District of Columbia, to be the sole executor of my estate.

"In evidence whereof I have hereunto set my hand this first day of June in the year of our Lord eighteen hundred and ninety-two.

"(Signed) MARY E. RUTH."

40 (*Codicil.*)

"I, Mary Eleanor Ruth being of sound and disposing mind and memory and understanding, do make and publish this codicil to my last will and testament—I hereby revoke and annul the bequest therein made by me to the Home for Incurables at Fordham, New York city, in the State of New York; and I hereby give and bequeath the five thousand dollars (heretofore in my will bequeathed to said Home for Incurables) to my friend Emeline Colville, the widow of Samuel Colville now living in New York city, said bequest

being on account of her kindness to my son and myself during his and my illness and my distress.

"In witness whereof I have hereto affixed my name this first day of June, in the year of our Lord eighteen hundred and ninety-two; and in all other things ratify and affirm my said will.

"MARY E. RUTH."

Both the will and the codicil were attested on the same day by the same three witnesses, of whom two at least were members of the bar, and one of these two, it seems to be conceded, was the scribe of both documents, which in their use of legal phraseoly plainly manifest the presence of professional knowledge in their preparation. The testatrix died two weeks after their execution.

The American Security and Trust Company assumed the executorship of the will, and upon the termination of the executorship it took the property as trustee. On April 4, 1895, by the death on that day of the grand-daughter of the testatrix, the trust vested in the company by the will was determined and ceased; and then, a question having arisen as to the proper construction of the codicil, the trust company instituted the present suit for the judicial ascertainment of the proper persons to whom it should make distribution of the property in its hands, at that time amounting to about thirty thousand dollars.

The next of kin of the deceased testatrix, the Hospital of the University of Pennsylvania, the Home for Incurables at Fordham, in the city of New York, and Emeline Colville were made defendants to the bill, and they all filed their answers, setting up
41 their respective claims. The Hospital of the University of Pennsylvania claimed to be entitled to the legacy of five thousand dollars left to it in the will, and maintained that there was nothing in the codicil that would in any manner affect the bequest. The Home for Incurables claimed in its answer to be entitled to the rest and residue of the estate of the deceased testatrix, as provided in the original will, and that the devise and bequest there made were not revoked by the codicil, or were revoked only, if at all, to the extent of five thousand dollars. Mrs. Emeline Colville claimed to be entitled to the whole of the rest and residue of the estate after the payment of the legacy to the Hospital of the University of Pennsylvania, and not merely to the sum of five thousand dollars specifically mentioned as the amount of the legacy to her. The heirs-at-law and next of kin claimed that the residue of the estate after the payment of the two legacies of five thousand dollars each, one to the Hospital of the University of Pennsylvania and the other to Mrs. Emeline Colville, vested in them by operation of law and in pursuance of the statute of distribution of decedents' estates as in case of intestacy.

There was no testimony taken. Counsel were all of opinion that, inasmuch as the mistake in the codicil, whatever it was, was a patent one, no testimony was admissible to aid in the solution of the difficulty. So the cause went to hearing in the court below upon the bill and answers, and that court thereupon rendered a

decree, wherein it was held that the legal effect of the codicil was to revoke the legacy of five thousand dollars previously given in the will to the Hospital of the University of Pennsylvania and to substitute Mrs. Emeline Colville as the legatee of said sum in the place and stead of said hospital, but not to revoke the bequest of the rest and residue of the estate to the Home for Incurables at Fordham.

From this decree the Hospital of the University of Pennsylvania, Mrs. Colville, and the nest of kin have all appealed.

1. With reference to the appeal of Mrs. Emeline Colville, we are entirely satisfied that there would be no justification whatever for any construction of the will and codicil of the deceased testa-
42 trix that would enlarge her legacy beyond the sum of five thousand dollars specifically bequeathed to her in the codicil. If it was the intention of the testatrix to substitute Mrs. Colville as the residuary legatee of the estate in the place and stead of the "Home for Incurables," which is the claim made on her behalf, the rule or maxim so frequently applied in such cases, *voluit sed non dixit*—she wished it, but she did not say so—is entirely pertinent. Nowhere, either in the will or codicil, is there the slightest manifestation of intention on the part of the testatrix to give more than five thousand dollars to Mrs. Colville. Indeed, the argument would be rather plausible that the legacy left to Mrs. Colville was a specific legacy assumed to have been previously left to some one else, and that, inasmuch as there was in fact no such previous specific legacy, therefore she would have nothing; but it is clear to us that it was the intention of the testatrix that Mrs. Colville should have five thousand dollars out of her estate, and that under no proper construction of the will and codicil could she be held entitled to any more.

The theory upon which it is sought to support her claim to be substituted for the Home for Incurables as the legatee of the rest and residue of the estate is that otherwise the testatrix would have died intestate as to a large part of her estate, and the very undertaking of a person to make a will creates a strong presumption of a purpose to dispose of the whole estate. Undoubtedly the theory is correct that the undertaking of a person to make a will creates a presumption of purpose on the part of that person to dispose of his whole estate; but the theory is just as valueless in the present connection as is the theory with which on behalf of the heirs-at-law and next of kin it is sought to antagonize it, namely, that the heirs-at-law are not to be disseised without specific words to that effect, and that every intendment is to be made in their favor—a theory greatly more regarded than the other by the authorities. There are many cases in which the execution of a will is entirely consistent with a purpose of partial intestacy; but, even assuming an express and unmistakable purpose to dispose of one's whole estate, such purpose is vain unless there is an effort to carry it into effect
43 in accordance with law. If one expressly stating in his will that he therein desires to dispose of his whole and entire estate, and, possessing three pieces of property, devises one to A and another to B, but is entirely silent as to the third, and there is no

residuary clause that could convey it, it would be idle to argue that such third piece would pass by the will. The theory is properly invoked, not to authorize the courts to make wills for parties or to supply presumed deficiencies in their wills, which they have no right to do, but to aid a testator's imperfect expression of his purpose. If there are two or more possible constructions of the terms of a will or of the terms of a devise or bequest in a will, it is proper that the courts should adopt that construction, if otherwise reasonable, which would make the testator die testate rather than intestate (*Given vs. Hilton*, 95 U. S., 391; *Smith vs. Bell*, 6 Pet., 68; *Hardenburg vs. Ray*, 101 U. S., 112). This is the extent of the doctrine, and it would be a perversion, not an application, of it to use it for the purpose of supplying clauses or expressions in a will which the testator may have intended to use, but which, as matter of fact, he did not use, and which there is nothing in the will itself to show that he intended to use, for conjecture cannot be permitted to supply the expression of intention.

In the documents before us there is nothing whatever to show any purpose on the part of the testatrix to devise and bequeath the rest and residue of her estate to Mrs. Colville. The bequest to Mrs. Colville was evidently an afterthought, anyhow. It did not enter into the consideration of the testatrix when she was making the will itself. It was no part of any general testamentary scheme or purpose. The idea that it was the intention of the testatrix to make Mrs. Colville her residuary devisee and legatee is one that is not suggested by anything that is found either in the will or codicil, but is the result of the fact that otherwise the testatrix would have died partially intestate; but courts are not allowed to interpolate provisions in a will merely for the purpose of preventing intestacy, either whole or partial.

We are of opinion that, whatever may be the merits of the
44 controversy as between the others who claim to be interested, Mrs. Emeline Colville is entitled only to the sum of five thousand dollars.

2. A more difficult question is presented as between the claims of the Home for Incurables, the Pennsylvania Hospital, and the next of kin. By the decree of the court below the latter are excluded, Mrs. Colville is substituted for the Pennsylvania Hospital, and the Home for Incurables remains entitled to the rest and residue of the estate, as provided in the original will. The construction of the codicil, by which this conclusion is reached, has undoubtedly the merit of interfering least with the scheme of the original will and of insuring entire testacy on the part of the testatrix, and we are not sure that this is not what the testatrix intended. But our difficulty is that in order to reach this construction we must indulge in conjecture which has no foundation in the will and must nullify the express provisions of the codicil. We must hold that when the testatrix in express and specific words revoked and annulled the bequest made in the will to the Home for Incurables at Fordham, New York city, in the State of New York, she meant and intended to revoke and annul another entirely distinct and different be-

quest, one to the Hospital of the University of Pennsylvania, and we must hold that when immediately afterwards in the codicil she took occasion to refer again to the institution whose legacy she revoked she spoke of it again as "said Home for Incurables." Now this seems to us not to be construction of the will and codicil, but rather an attempt to supply its deficiencies and practically to make a will for the testatrix.

It is well-settled law that, however clearly it may be shown by testimony beyond all question that when a testator has said one thing he meant another and a different thing, the courts have no right to attempt to rectify the mistake. Such assumption of authority would be a most dangerous power for them to exercise. This would seem to be the unanimous doctrine of all the authorities, and those which seem to be exceptions to the rule are not in fact exceptions. The most prominent of these latter, perhaps, is the case of *Patch vs. White*, 117 U. S., 210.

In that case a testator had devised lot 6, in square 403,
45 with the improvements upon it, when he never owned that lot and the lot had no improvements upon it and when he did own lot 3, in square 406, which did have improvements upon it, and when the scheme of his will required that effect should be given to this devise and no effect could be given to it except by transfer of the figures, as stated, in accordance with the demonstration of the oral testimony in the case, the court held that here was a case of latent, not of patent ambiguity, and it said:

"It is settled doctrine that as a latent ambiguity is only disclosed by extrinsic evidence, it may be removed by extrinsic evidence. Such an ambiguity may arise upon a will, either when it names a person as the object of a gift or a thing as the subject of it and there are two persons or things that answer such name or description, or, secondly, it may arise when the will contains a misdescription of the object or subject, as where there is no such person or thing in existence, or, if in existence, the person is not the one intended or the thing does not belong to the testator (1 Jarman on Wills, 370; Hawkins on Wills, 9, 10). Where it consists of a misdescription, as before stated, if the misdescription can be struck out and enough remain in the will to identify the person or thing, the court will deal with it in that way, or if it is an obvious mistake will read it as if corrected. The ambiguity in the latter case consists in the repugnancy between the manifest intent of the will and the misdescription of the donee or the subject of the gift. In such a case evidence is always admissible to show the condition of the testator's family and estate and the circumstances by which he was surrounded at the time of making his will (1 Jarman on Wills, 364, 365; 1 Roper on Legacies, 297, 4th ed.; 2 Williams on Executors, 988, 1032). Mr. Williams, afterwards Mr. Justice Williams, says:

'Where the name or description of a legatee is erroneous and there is no reasonable doubt as to the person who was intended to be named or described the mistake shall not disappoint the bequest. The error may be rectified, 1st, by the context of the will; 2d, to a

certain extent, by parol evidence. A court may inquire into every material fact relating to the person who claims to be interested under the will and to the circumstances of the testator and of his family and affairs for the purpose of enabling the court to identify the person intended by the testator' (pp. 988, 989). Again, he says, on page 1032: 'Mistakes in the description of legacies, like those in the description of legatees, may be rectified by reference to the terms of the gift and evidence of extrinsic circumstances taken together. The error of the testator, says Swinburne, in the proper name of the thing bequeathed doth not hurt the validity of the legacy, so that the body or substance of the thing bequeathed is certain.'"

This case of *Patch vs. White*, as will be perceived, was one of latent and not of patent ambiguity, as the present case is conceded to be, and might, therefore, be regarded as wholly inapplicable; but we have quoted from it to show the limits within which ambiguity may be removed or mistake rectified in the construction of wills, and we find from the doctrine of that case that we have no means of rectifying the palpable mistake that was committed in the present instance.

In the codicil before us we find two distinct and practically independent testamentary dispositions: First, we have a revocation and annulment in positive and unmistakable terms of a bequest in the will to the Home for Incurables at Fordham, New York city, in the State of New York; and, secondly, we have a bequest of five thousand dollars to Mrs. Emeline Colville, of the city of New York. Coupled with this latter provision are the terms which cause all the difficulty in the case. The expression is, "I give and bequeath the five thousand dollars (heretofore in my will bequeathed to said Home for Incurables) to my friend Emeline Colville," &c. Now, there was no such sum of five thousand dollars bequeathed in the will to the Home for Incurables. There was such a sum bequeathed to the Hospital of the University of Pennsylvania, while to the Home for Incurables there was a devise and bequest of all the rest and residue of the estate.

It matters not now to inquire whether the mistake was that of the testatrix herself or of the scribe of the will, nor does it matter that the latter appears in these proceedings advocating the claims of the Hospital of the University of Pennsylvania. What is of consequence is to determine whether we can rectify a mistake which is palpable and how it may be rectified.

The first of the two testamentary dispositions of the codicil, if standing alone, would present no difficulty. It is clear, precise, explicit, and unmistakable, with no element of ambiguity, either latent or patent. It nullifies in positive terms a bequest made in the will, and it is of no consequence that it purports only to revoke and annul a bequest when the will purports to devise realty as well as to bequeath personal property, for the will directs the trustee to convert the real estate into personalty, which was actually done, and all that the Home for Incurables should take would be personalty. Such a revocation could no more be defeated by proof of mistake of the

donee than could a legacy in the will by similar proof. It would not be competent for parties to show, for instance, that the legacy of five thousand dollars was intended for the Home for Incurables, while the Hospital of the University of Pennsylvania was intended to be the residuary legatee; and so, when the codicil revoked the one legacy, it is not competent for parties to show by extraneous evidence that it was the other legacy that was intended to be revoked. If language is capable of meaning, the terms of this first provision of the codicil are beyond all question, and they should be taken to mean precisely what they import—a revocation of the bequest made in the will of the rest and residue of the estate to the Home for Incurables at Fordham, in the city of New York.

And with respect to the second of these two testamentary dispositions it is equally clear and beyond all question that there was a sum of five thousand dollars intended to be left to Mrs. Emeline Colville. In accordance with the doctrine in the case of *Patch vs. White*, which is the doctrine of reason, that intention should not be defeated upon the ground that the testatrix erroneously stated that this sum had been left in the will to the Home for Incurables; the rule of *mala descriptio non nocet* to which effect is sought to be given in the case of *Patch vs. White* is equally applicable here as
48 there, and we believe that no one claims that Mrs. Colville should be deprived of her legacy of five thousand dollars by reason of this erroneous statement made in connection with it.

So that here we have two distinct testamentary dispositions, having in their terms no necessary connection with each other, from the first of which, when considered alone, all suspicion even of ambiguity is absent, and to the second of which full force and effect may be given by the disregard of a recital or collateral statement not at all necessary to the validity of the bequest and without which the bequest would be equally or even more effective; and we are asked, by the combination of the two dispositions, by the connection of the recital in the second disposition with the prior unequivocal disposition, and by the fact that no legacy of five thousand dollars had been left to any one but the Hospital of the University of Pennsylvania, therefore to hold that it was this legacy, and none other, that was intended to be revoked. This may have been the intention of the testa-rix, but it is mere conjecture. Other conjectures are equally available, as, for instance, that it was her intention to revoke both of the bequests in the will—to revoke absolutely the residuary bequest to the Home for Incurables and to substitute Mrs. Colville as the beneficiary of the other bequest in the place of the Hospital of the University of Pennsylvania; but when we once embark on the boundless sea of conjecture we infringe upon the inexorable rule that courts must not make wills for parties, and are confined merely to the work of construction of the wills that are brought before them.

We give effect to each and every provision of the codicil and to the will as an entirety by rejecting as surplusage the erroneous recital in the second clause of the codicil, which is no more than a recital and not essential to the integrity of the instrument as a tes-

tamentary disposition. If thereby it results that the testatrix died intestate as to the rest and residue of her estate, that is no more than would result in any case where a testator, intending to dispose of his estate, has failed to use apt terms for the purpose, or has not otherwise complied with the requirements prescribed by law
49 to effect his purpose. And if this conclusion also fails to give effect to the real intention of the testatrix, whatever that may have been, we can only say again that the testatrix has failed so to comply with the requirements of law as to enable the courts to give effect to her intention. It would be difficult in any view that we might take of this case to find any controlling purpose or guiding intention on the part of the testatrix, inasmuch as the fact that before the ink was dry with which her original will was written she radically changed her mind in regard to the disposition of her property is sufficient to raise a doubt whether she had in fact any well-defined purpose in regard to such disposition, and were we to indulge in conjecture we would feel no assurance in any conjecture that we might adopt that we had found the true intent and purpose of the testatrix. We deem it most proper, therefore, to indulge in no conjecture; to take the words of the will and codicil as they stand, and only to reject as unnecessary one phrase, which is in fact unnecessary to the integrity of the will and codicil.

Entertaining these views, we must hold there was error in the decision of the court below, and that it is the true legal intent and meaning of the will and codicil that the bequest of five thousand dollars to the Hospital of the University of Pennsylvania remains intact and unaffected by the codicil; that the bequest of the rest and residue of the estate to the Home for Incurables at Fordham, in the city of New York, was and is revoked by the codicil; that out of this rest and residue there is bequeathed to Mrs. Emeline Colville the sum of five thousand dollars, and that the remainder of the estate is distributable to the next of kin in accordance with the provisions of the statute of distributions.

The cause will be remanded to the Supreme Court of the District of Columbia with directions to vacate its decree heretofore rendered therein, and to enter a decree in accordance with this opinion, and for such further proceedings, if any, as may be just and proper in the premises; the cost of this appeal to be paid out of the fund. And it is so ordered.

50 *Dissenting Opinion by Mr. Chief Justice Alvey.*

It is always with diffidence and regret that I feel myself constrained to dissent from the opinion of my brothers, but in this case I cannot do otherwise, in justice to a settled conviction, than dissent from the construction adopted by them of the will and codicil of the late Mrs. Ruth. I had a very decided opinion at the hearing that the decree of the court below ought to be affirmed, and further reflection has not changed that opinion, but has strongly confirmed me in the conviction of its correctness. I shall not undertake by any extended argument to support my opinion, but shall briefly

state the grounds upon which that opinion is founded. To do this it is necessary to refer to the terms and provisions of both will and codicil.

The testatrix had an estate consisting of both real and personal property, amounting to something more than $30,000, and which she, by her will dated the 1st day of June, 1892, effectually devised and bequeathed in terms that admitted of no doubt or question. The will furnishes intrinsic evidence of a matured scheme of disposition. She devised and bequeathed her entire estate in trust for a limited time to serve a particular purpose; that was to raise an income to be applied to the support and maintenance of her granddaughter for and during the life of the latter. The grand-daughter died about three years after the death of the testatrix. After the purposes of the trust were served she then provided that there should be delivered by the trustee to the Hospital of the University of Pennsylvania the sum of $5,000, which sum "to be used by said hospital to endow and forever maintain a first-class perpetual bed in said hospital in the city of Philadelphia, said bed to be in the name and memory of my beloved son Melancthon Love Ruth." She then provided by the will that—

"All the residue and remainder of my said estate of whatever kind, after the payment of said five thousand dollars for the establishment of said perpetual bed in said hospital, I give, devise and bequeath to the 'Home for Incurables,' at Fordham, New York city, in the State of New York, its successors and assigns, forever, to be used by said 'Home for Incurables' to endow and forever
51 maintain one or more beds in said home in *in* the name and memory of my beloved son Melancthon Love Ruth."

On the same day of the making of this will, and it may have been immediately thereafter, the testatrix added a codicil, not, as it would appear, to change the whole scheme of her will in respect to the entire residue of her estate, but in respect to the pecuniary legacy of a defined amount that had been disposed of in her will and which she found necessary to recall to enable her to bestow a bounty upon a friend in recognition of kindness that she had received. By this brief codicil she declared: "I hereby revoke and annul *the bequest* therein (referring to her will) made by me to the Home for Incurables at Fordham, New York city, in the State of New York, and I hereby give and bequeast *the* five thousand dollars (heretofore in my will bequeathed to said Home for Incurables), to my friend Emeline Colville, the widow of Samuel Colville, now living in New York city, said bequest being on account of her kindness to my son and myself during his and my illness, and my distress."

It is conceded upon all sides that it was not the intention of Mrs. Ruth to die intestate as to any portion of her estate, and no construction should be adopted that will produce intestacy as to any part of the estate if such construction can be avoided. That there was a mistake made by the draftsman of this codicil is conceded by all concerned, and the question is, How is that mistake to effect the will? In the first place, there was no pecuniary legacy given as

such by the will to the Home for Incurables, and it is conceded that it was not intended to give to Mrs. Colville more than the $5,000 mentioned. There was, as we have seen, a pecuniary legacy of $5,000 given by the will to the Hospital of the University of Pennsylvania, and if we conclude that the draftsman of this codicil, by momentary inadvertence, confounded the name of one institution with the other and inserted the name and description of the Home of Incurables instead of the Hospital of the University all the difficulty is removed. It is very clear, to my mind at least, that the legacy given by the will to the University Hospital was the legacy that was intended to be revoked in order that a legacy of the same amount might be given to Mrs. Colville. It cannot be supposed that within the short time that had intervened between the execution of the will and the
52 making of the codicil that the testatrix had determined to destroy the whole scheme of her will with respect to the bulk of her estate, consisting of both real and personal property, for the purpose simply of raising a pecuniary legacy of $5,000. If the legacy of $5,000 to Mrs. Colville had been intended to be paid out of the residue of the estate, it would not have been necessary or proper to revoke the whole residuary devise and bequest made by the will, but the proper mode of making such pecuniary bequest in the codicil would have been simply to direct the amount to be paid out of the residue. In disposing of the residue of her estate the testatrix used apt and appropriate legal terms to transfer both real and personal property, of which the residue was composed, but in the revocation in the codicil the terms employed have reference to a particular pecuniary legacy only that had been bequeathed by the will. The codicil should be read in subordination to the general scheme and plan of the will, unless the terms employed be so plain and unmistakable that no doubt whatever could exist as to the real intention of the testatrix. Here it is admitted, in the opinion of the majority of the court, that grave doubt does exist, and in such case it is better and, indeed, it is the necessary legal consequence that the codicil should fail of effect rather than the intention of the testatrix in respect of the principal part of her estate should be defeated, and if the conceded mistake in the codicil cannot be overcome and corrected by construction, as I think it can, then I should say that the codicil should fall rather than the will be defeated and the testatrix be made to die intestate as to the larger portion of her estate. The testatrix, after the payment of the $5,000 legacy to the Hospital of the University, devoted the entire residue of her estate to aid in the support of a most humane and worthy charity, and I cannot believe for a moment, upon any fair construction of the will and codicil, that it was the intention of the testatrix to revoke that residuary devise and bequest in order to raise the $5,000 for Mrs. Colville. The terms of revocation employed in the codicil, according to my understanding and construction of them, relate simply and exclusively to the pecuniary
53 legacy of $5,000 given by the will to the University Hospital,

and that Mrs. Colville was intended to be substituted to that legacy and to no other part of the estate.

In my opinion the decree appealed from ought to be affirmed.

54 MONDAY, *January 4th, A. D.* 1897.

EMELINE COLVILLE, Appellant,
vs.
AMERICAN SECURITY AND TRUST COMPANY, Trustee,
} No. 614.

and

MARY SPENCER NOBLE, PATTIE BELLE TILGHMAN, Jonathan Perry Harrison, Jr., Samuel Alexander Harrison, Lucy Bird Harrison, Bradford O. Harrison, Lydia Caroline Harrison, Eleanor Susanna Willis, Robert Leigh Spencer, Webster Lindsley Spencer, Katharene C. Spencer, Emily H. Hayden, and The Hospital of the University of Pennsylvania, Appellants,
vs.
THE AMERICAN SECURITY AND TRUST COMPANY, a Corporation, and The Home for Incurables.
} No. 615. January Term, 1897.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia on separate appeals and was argued by counsel. On consideration whereof it is now here ordered, adjudged, and decreed by this court that this cause be, and the same is hereby, remanded to the supreme court of the District of Columbia, with directions to vacate its decree heretofore entered therein and to enter a decree in conformity with the opinion of this court and for such further proceedings, if any, as may be just and proper in the premises, the costs in this court to be paid out of the fund.

Per MR. JUSTICE MORRIS.

January 4,1897.

Dissenting, Mr. Chief Justice Alvey.

55 MONDAY, *January 11th, A. D.* 1897.

MARY SPENCER NOBLE, PATTIE BELLE TILGHMAN, JONATHAN PERRY HARRISON, JR., SAMUEL ALEXANDER HARRISON, LUCY BIRD HARRISON, BRADFORD O. HARRISON, LYDIA CAROLINE HARRISON, ELEANOR SUSANNA WILLIS, ROBERT LEIGH SPENCER, WEBSTER LINDSLEY SPENCER, KATHARINE C. SPENCER, EMILY H. HAYDEN, and THE HOSPITAL OF THE UNIVERSITY OF PENNSYLVANIA, Appellants,
vs.
THE AMERICAN SECURITY AND TRUST COMPANY, a Corporation, and THE HOME FOR INCURABLES. } No. 615.

On motion of Mr. J. S. Flannery, attorney for the appellee The Home for Incurables in the above-entitled cause, it is by the court ordered that said appellee be allowed an appeal to the Supreme Court of the United States on giving a supersedeas bond in the sum of ten thousand dollars.

56 FRIDAY, *January 15th, A. D.* 1897.

MARY SPENCER NOBLE, PATTIE BELLE TILGHMAN, JONATHAN PERRY HARRISON, JR., SAMUEL ALEXANDER HARRISON, LUCY BIRD HARRISON, BRADFORD O. HARRISON, LYDIA CAROLINE HARRISON, ELEANOR SUSANNA WILLIS, ROBERT LEIGH SPENCER, WEBSTER LINDSLEY SPENCER, KATHARINE C. SPENCER, EMILY H. HAYDEN, and THE HOSPITAL OF THE UNIVERSITY OF PENNSYLVANIA, Appellants,
vs.
THE AMERICAN SECURITY AND TRUST COMPANY, a Corporation, and THE HOME FOR INCURABLES. } No. 615.

On motion of Mr. J. S. Flannery, of counsel for the Home for Incurables, supersedeas bond on appeal to the Supreme Court of the United States approved.

57 Court of Appeals of the District of Columbia, January Term, 1897.

MARY SPENCER NOBLE *et al.*
vs.
AMERICAN SECURITY AND TRUST CO. *et al.* } No. 615.

The clerk will please issue a citation in the above-entitled cause and cite the following parties: Mary Spencer Noble, Pattie Belle Tilghman, Jonathan Perry Harrison, Jr., Samuel Alexander Harrison, Lucy Bird Harrison, Bradford O. Harrison, Lydia Caroline Harrison, Eleanor Susanna Willis, Robert Leigh Spencer, Webster Lindsley Spencer, Katharine C. Spencer, Emily H. Hayden, The Hospital of the University of Pennsylvania, and The American Security and Trust Company.

J. S. FLANNERY,
Solicitor for the Home for Incurables.

Endorsed: No. 615. Court of Appeals of the District of Columbia. Order for citation. Court of Appeals, District of Columbia. Filed Jan. 15, 1897. Robert Willett, clerk.

58 Know all men by these presents that we, the Home for Incurables (a corporation) of the State of New York, as principal, and the Lawyers' Surety Company of New York, a corporation organized under the laws of the State of New York and duly authorized to transact business in the District of Columbia, as surety, are held and firmly bound unto Mary S. Noble, Pattie B. Tilghman, Jonathan P. Harrison, Jr., Samuel A. Harrison, Lucy Bird Harrison, Bradford O. Harrison, Lydia C. Harrison, Eleanor S. Willis, Robert L. Spencer, Webster L. Spencer, Katharine C. Spencer, Emily H. Hayden, and the Hospital of the University of Pennsylvania in the full and just sum of ten thousand dollars ($10,000), to be paid to the said Mary S. Noble, Pattie B. Tilghman, Jonathan P. Harrison, Jr., Samuel A. Harrison, Lucy Bird Harrison, Bradford O. Harrison, Lydia C. Harrison, Eleanor S. Willis, Robert L. Spencer, Webster L. Spencer, Katharine C. Spencer, Emily H. Hayden, and the Hospital of the University of Pennsylvania, their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 12th day of January, in the year of our Lord one thousand eight hundred and ninety-seven.

Whereas lately, at a Court of Appeals of the District of Columbia, in a suit depending in said court between Mary Spencer Noble and others, appellants, and The American Security and Trust Company, a corporation, and The Home for Incurables, being cause No. 615, at the October term, 1896, of said court, a decree was rendered against the said Home for Incurables, and the said Home for Incurables having obtained an appeal in open court to reverse the decree in the aforesaid suit, and a citation directed to the said Mary S. Noble and others aforesaid, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington within thirty days from the date thereof:

59 Now, the condition of the above obligation is such that if the said Home for Incurables shall prosecute its appeal to effect and answer all damages and costs if it shall fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

HOME FOR INCURABLES.
GEORGE SHERMAN, *Treasurer.* [SEAL.]
THE LAWYERS' SURETY COMPANY
OF NEW YORK, [SEAL.]
By THOMAS HUNT, *2nd Vice-President.*

Attest: JOEL RATHBONE, *Secretary.*

Sealed and delivered in the presence of—
EDWARD J. McCABE,
As to Home for Incurables.
H. G. HINTON,
As to L. S. Co.

Approved by—
R. H. ALVEY, *Chief Justice.*

60 STATE OF NEW YORK, } ss:
City and County of New York, }

On this thirteenth day of January, in the year 1897, before me personally came George Sherman, to me known, who, being by me duly sworn, did depose and say that he resided in the city of New York; that he is the treasurer of the Home for Incurables, the corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

EDWARD J. McCABE,
[SEAL.] *Notary Public, Kings Co., N. Y.*

Certificate filed in New York county.

Form 3.

STATE OF NEW YORK, } ss:
City and County of New York, }

I, Henry D. Purroy, clerk of the city and county of New York and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that Edward J. McCabe has filed in the clerk's office of the county of New York a certified copy of his appointment as notary public for the county of Kings, with his autograph signature, and was at the time of taking the proof or acknowledgment of the annexed instrument duly authorized to take the same; and, further, that I am well acquainted with the handwriting of such notary and verily believe the signature to the said certificate of proof or acknowledgment to be genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 13 day of Jan'y, 1897.

[SEAL.] HENRY D. PURROY, *Clerk.*

61 STATE, CITY, AND COUNTY OF NEW YORK, ss:

On this 12th day of January, 1897, before me personally appeared Thomas Hunt, 2d vice-president of the Lawyers' Surety Company of New York, with whom I am personally acquainted, who, being by me duly sworn, said that he resides in the city of New York; that he is the 2d vice-president of the Lawyers' Surety Company of New York; that he knows the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed by order of the board of directors of said company, and that he signed said instrument as 2d vice-president of said company by like authority, and that the liabilities of said company do not exceed its assets, as ascertained in the manner provided in section 3, chapter 720, of the New York Session Laws of 1893; and the said Thomas Hunt further said that he is acquainted with Joel Rathbone and knows him to be the secretary of said company; that the signature of said Joel Rathbone

subscribed to the said instrument is in the genuine handwriting of the said Joel Rathbone and was thereto subscribed by the like order of the said board of directors and in the presence of him, the said Thomas Hunt, 2d vice-president.

H. G. HINTON.

[SEAL.] *Notary Public, Kings County, N. Y.*

Certificate filed in N. Y. Co.

Form 3.

STATE OF NEW YORK, }
City and County of New York, } *ss.:*

I, Henry D. Purroy, clerk of the city and county of New York and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that H. G. Hinton has filed in the clerk's office of the county of New York a certified copy of his appointment as notary public for the county of Kings, with his autograph signature, and was at the time of taking the proof or acknowledgment of the annexed instrument
62 duly authorized to take the same; and, further, that I am well acquainted with the handwriting of such notary, and verily believe the signature to the said certificate of proof or acknowledgment to be genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 13 day of Jan'y, 1897.

[SEAL.] HENRY D. PURROY, *Clerk.*

At a stated meeting of the board of directors of the Lawyers' Surety Company of New York, held at the office of the company, Nos. 32, 34, and 36 Liberty street, in said city, on the 10th day of May, 1893, on motion, it was unanimously—

"Resolved, That, in pursuance of section eight hundred and eleven of the Code of Civil Procedure, the president, the vice-president, the acting president, or the second vice-president be, and either of them is, hereby authorized and empowered to sign, execute, and deliver any and all bonds or undertakings for or on behalf of the company and to attach thereto the seal of the corporation, the same to be attested by the secretary or the acting secretary."

CITY AND COUNTY OF NEW YORK, *ss.:*

I, Joel Rathbone, secretary of the Lawyers' Surety Company of New York, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom and of the whole of said original resolution.

Given under my hand and the seal of the company, at the city of New York, this 12th day of January, 1897.

[SEAL.] JOEL RATHBONE, *Secretary.*

Endorsed: No. 615. Mary Spencer Noble *et al. vs.* Amer. Security & Trust Co. *et al.* Bond of Home for Incurables on appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Jan. 15, 1897. Robert Willett, clerk.

63 UNITED STATES OF AMERICA, *ss:*

To Mary Spencer Noble, Pattie Belle Tilghman, Jonathan Perry Harrison, Jr., Samuel Alexander Harrison, Lucy Bird Harrison, Bradford O. Harrison, Lydia Caroline Harrison, Eleanor Susanna Willis, Robert Leigh Spencer, Webster Lindsley Spencer, Katharine C. Spencer, Emily H. Hayden, The Hospital of the University of Pennsylvania, and The American Security and Trust Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein The Home for Incurables is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 15th day of January, in the year of our Lord one thousand eight hundred and ninety-seven.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

63½ JAN. 16, 1897.

Service accepted for heirs of Mary E. Ruth.

WEBB, WEBB & LINDSLEY.

Service accepted on behalf of the Hospital of the University of Pennsylvania.

CORCORAN THOM, *Of Counsel.*

Jan. 16th, 1897.

WM. A. McKENNEY,
Sol'r for American Security & Trust.

Court of Appeals, District of Columbia. Filed Jan. 16, 1897. Robert Willett, clerk.

64 MONDAY, *January* 11, 1897.

EMELINE COLVILLE, Appellant,
vs.
AMERICAN SECURITY AND TRUST COMPANY, Trustee. } No. 614.

On motion of Mr. Edwin Sutherland, attorney for the appellant in the above-entitled cause, it is by the court ordered that said ap-

pellant be allowed an appeal to the Supreme Court of the United States on giving supersedeas bond in the sum of ten thousand dollars.

65 Know all men by these presents that we, Emeline Colville, of 112 West 104th St., New York city, as principal, and The Lawyers' Surety Company of New York, a corporation organized under the laws of the State of New York and duly authorized to transact business in the District of Columbia, as surety, are held and firmly bound unto American Security and Trust Company in the full and just sum of ten thousand (10,000) dollars, to be paid to the said American Security and Trust Company, its successors and assigns; to which payment, well and truly to be made, the said Emeline Colville binds herself, her heirs, executors, and administrators, and the said surety company binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 21st day of January, in the year of our Lord one thousand eight hundred and ninety-seven.

Whereas lately, at a Court of Appeals of the District of Columbia, in a suit depending in said court between Emeline Colville, appellant, and the American Security and Trust Company, trustee, being cause No. 614, at the October term, 1896, of said court, a decree was rendered against the said Emeline Colville, and the said Emeline Colville having obtained an appeal in open court to reverse the decree in the aforesaid suit, and a citation directed to the said American Security and Trust Company, aforesaid, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said Emeline Colville shall prosecute her appeal to effect and answer all damages and costs if she shall fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

EMELINE COLVILLE. [SEAL.]

66 THE LAWYERS' SURETY COMPANY OF NEW YORK,

[SEAL.] By THOMAS HUNT, *2d Vice-President.*

Attest: LOUIS E. KUSTER,
Acting Secretary.

Sealed and delivered in the presence of—
LOUIS F. RYAN,
H. G. HINTON,
As to L. S. Co.

Approved by—
R. H. ALVEY,
Chief Justice,

As a supersedeas.

STATE OF NEW YORK, } ss:
County of New York, }

On this 21st day of January, 1897, before me personally came Emeline Colville, to me known and known to me to be the individual described in and who executed the foregoing instrument, and acknowledged to me that she executed the same.

LOUIS F. RYAN,
[SEAL.] *Notary Public* (57), *N. Y. County.*

67 STATE, CITY, AND COUNTY OF NEW YORK, ss:

On this 21st day of January, 1897, before me personally appeared Thomas Hunt, 2d vice-president of the Lawyers' Surety Company of New York, with whom I am personally acquainted, who, being by me duly sworn, said that he resides in the city of New York; that he is the 2d vice-president of the Lawyers' Surety Company of New York; that he knows the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed by order of the board of directors of said company, and that he signed said instrument as 2d vice-president of said company by like authority; and the said Thomas Hunt further said that he is acquainted with Louis E. Kuster and knows him to be the acting secretary of said company; that the signature of said Louis E. Kuster subscribed to the said instrument is in the genuine handwriting of the said Louis E. Kuster, and was thereto subscribed by the like order of the said board of directors and in the presence of him, the said Thomas Hunt, 2d vice-president.

H. G. HINTON,
[SEAL.] *Notary Public, Kings Co., N. Y.*

Certificate filed in N. Y. Co.

At a stated meeting of the board of directors of the Lawyers' Surety Company of New York, held at the office of the company, Nos. 32, 34, and 36 Liberty street, in said city, on the 10th day of May, 1893, on motion, it was unanimously—

"Resolved, That, in pursuance of section eight hundred and eleven of the Code of Civil Procedure, the president, the vice-president, the acting president, or the second vice-president be, and either of them is hereby, authorized and empowered to sign, execute, and deliver any and all bonds or undertakings for or on behalf of the
68 company, and to attach thereto the seal of the corporation, the same to be attested by the secretary or the acting secretary."

CITY AND COUNTY OF NEW YORK, ss:

I, Louis E. Kuster, acting secretary of the Lawyers' Surety Company, having compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, do hereby certify that the same is a true and correct transcript therefrom and of the whole of said original resolution.

Given under my hand and the seal of the company, at the city of New York, this 21st day of January, 1897.

[SEAL.] LOUIS E. KUSTER,
Acting Secretary.

Endorsed: No. 614. Emeline Colville, appellant, *vs.* American Surety and Trust Company, trustee. Bond of Emeline Colville on appeal to Supreme Court of the United States. Court of Appeals, District of Columbia. Filed Jan. 28, 1897. Robert Willett, clerk.

69 UNITED STATES OF AMERICA, *ss:*

To American Security and Trust Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Emeline Colville is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 28th day of January, in the year of our Lord one thousand eight hundred and ninety-seven.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

1897, Jan'y 28.

Service accepted.

WM. A. McKENNEY,
Att'y American Security & Trust Co.

[Endorsed:] Court of Appeals, District of Columbia. Filed Jan. 28, 1897. Robert Willett, clerk.

70 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 69, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Emeline Colville, appellant, *vs.* American Security and Trust Company, trustee, and Mary Spencer Noble *et al.*, appellants, *vs.* The American Security and Trust Company *et al.*, Nos. 614 & 615, January term, 1897, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 4th day of February, A. D. 1897.

Seal Court of Appeals, District of Columbia.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: Case Nos. 16,490 & 16,496. District of Columbia Court of Appeals. Term No., 304: The Home for Incurables, appellant, *vs.* Mary Spencer Noble *et al.;* filed February 10, 1897; and Term No., 309: Emeline Colville, appellant, *vs.* The American Security and Trust Company. Filed February 19, 1897.